

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 17 Expiration of the Mandatory Waiting Period for Firearm Purchases

SPONSOR(S): Criminal Justice Subcommittee, Rudman and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 5 N, As CS	Padgett	Hall
2) Judiciary Committee	13 Y, 7 N	Padgett	Kramer

SUMMARY ANALYSIS

Both state and Federal law regulate the purchase of firearms, which can either be made through a federal firearms licensee (FFL) or through a private sale. The sale of a firearm by an FFL is generally subject to greater restrictions than those imposed on a sale by a private citizen. Under Federal law, subject to limited exceptions, an FFL is prohibited from transferring a firearm to a purchaser unless the purchaser has successfully completed a background check. If the background check is not completed within three business days, the FFL may transfer a firearm to a purchaser by default unless a state law provides otherwise.

Article I, section 8(b) of the Florida Constitution requires a mandatory waiting period of three days, excluding weekends and holidays, between the purchase and delivery at retail of any handgun. The mandatory waiting period does not apply if the purchaser holds a concealed weapons license or if the transaction involves the trade in of a handgun. The waiting period in the Florida Constitution was mirrored in s. 790.0655, F.S., until 2018. In that year, subject to limited exceptions, Florida expanded the statutory three day waiting period imposed between the purchase and delivery of a handgun from an FFL to apply to all firearms. In addition, Florida also prohibited an FFL from transferring a firearm to a purchaser unless the purchaser had successfully completed a background check confirming that he or she was not prohibited from purchasing a firearm under state or Federal law, regardless of the length of time required to complete the background check.

CS/HB 17 amends s. 790.0655, F.S., to require the mandatory waiting period for all firearm purchases made from an FFL to expire three days after the purchase of a firearm, excluding weekends and legal holidays, regardless of whether a background check has been completed. Under the bill, and in compliance with s. 790.065, F.S., and Federal law, if the Florida Department of Law Enforcement (FDLE) is unable to determine whether a person is prohibited from purchasing a firearm from an FFL within the three day period, FDLE must issue a conditional approval authorizing a purchaser to take delivery of a firearm. If FDLE subsequently determines that a purchaser is not authorized to possess a firearm, FDLE is required to notify the Federal Bureau of Alcohol, Tobacco, and Firearms and a local law enforcement agency, who are responsible for retrieving the firearm.

The bill retains exceptions to the three day waiting period in current law for a firearm purchase from an FFL by a person who holds a concealed weapons license under s. 790.06, F.S.; to the trade-in of another firearm; or to the purchase of a rifle or shotgun by a law enforcement officer, correctional officer, or person who has successfully completed a specified hunter safety course or is exempt from such requirements.

The bill also deletes the provision in current law that prohibits an FFL from transferring a firearm to a purchaser prior to the successful completion of a background check. Under the bill, and in compliance with s. 790.065, F.S., if the Florida Department of Law Enforcement (FDLE) is unable to determine whether a person is prohibited from purchasing a firearm from an FFL within 24 *working* hours, FDLE must issue a conditional approval authorizing a purchaser to take delivery of a firearm. If FDLE subsequently determines that a purchaser is not authorized to possess a firearm, FDLE is required to notify a local law enforcement agency to retrieve the firearm.

FDLE estimates that the bill will have minimal fiscal impact and that any increase in workload will be absorbed within existing resources.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0017b.JDC

DATE: 2/21/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Purchase and Sale of Firearms

Federal Firearms Licensee

A person may not engage in the business of importing, manufacturing, or dealing in firearms unless he or she is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).¹ A federal firearms licensee (FFL) must comply with both state and Federal law when selling a firearm.² Thus, if a state imposes requirements for the purchase or possession of a firearm which are *greater* than Federal law, such as requiring a mandatory waiting period between the purchase and delivery of a firearm, an FFL may not sell or deliver a firearm to a prospective purchaser unless he or she satisfies the more restrictive state requirements. If a state imposes requirements on the purchase or possession of a firearm that is less restrictive than Federal law, Federal law applies. In sum, Federal law relating to the purchase and sale of a firearm acts as the “floor,” but states may impose more restrictive requirements if they choose to do so.

Private Transaction

A person may also purchase a firearm through a private transaction (i.e. purchasing a firearm from a person who is a private citizen and *not* an FFL). Many of the requirements that apply to the sale of a firearm by an FFL do not apply to a private transaction. A seller in a private transaction is not explicitly required to complete a background check,³ verify a purchaser’s age,⁴ or comply with any mandatory waiting periods prior to transferring a firearm to a purchaser.

Background Checks

To verify that a purchaser meets state and federal eligibility requirements to purchase a firearm, an FFL must submit a firearm purchaser’s identifying information to the Florida Department of Law Enforcement (FDLE), which conducts a state background check.⁵ FDLE also submits the purchaser’s identifying information to the Federal Bureau of Investigation’s National Instant Criminal Background Check System (NICS) to conduct a national background check.⁶

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

¹ 18 U.S.C. § 922(a)(1)(A).

² 18 U.S.C. §922(b)(2).

³ A private seller may not sell or dispose of a firearm to any person if the seller knows, or has reasonable cause to know, is prohibited from purchasing a firearm due to his or her prior criminal history, immigration status, or mental condition. 18 U.S.C. § 922.

⁴ A private seller is prohibited from selling, delivering, or otherwise transferring a handgun to a person who the transferor knows or has reasonable cause to believe is under 18 years of age. 18 U.S.C. §922(x)(1)(A).

⁵ S. 790.065(1)(a)3., F.S.

⁶ *Id.*

Section 790.065(2), F.S., disqualifies a person from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.;
- Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;
- Has had a withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred;
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met;
- Has been indicted or had an information filed against her or him for a felony offense;
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her;
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her;
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.; or
- Has been arrested for any of the offenses enumerated in s. 790.065(2)(c)1., F.S.

Federal Law

18 U.S.C. §922(t), prohibits, with limited exceptions,⁷ an FFL from transferring a firearm to a purchaser unless the purchaser has successfully completed a background check. Under Federal law, if the background check is not completed within three business days, the FFL may transfer a firearm to a purchaser by default unless a state law provides otherwise.⁸

Florida Law

In Florida, an FFL is prohibited from transferring a firearm to a purchaser until he or she receives confirmation from FDLE that the prospective purchaser is *not* prohibited from purchasing a firearm.⁹ According to FDLE, 98 percent of firearm background checks are completed “within minutes of being received,” with 96 percent of such background checks resulting in approval and 2 percent resulting in non-approval.¹⁰ For the remaining 2 percent of pending background checks that are unresolved, FDLE conducts additional research to determine whether a person is disqualified from purchasing a firearm. Under current law, there is no “default” provision that authorizes an FFL in Florida to transfer a firearm after a specified time period if a background check remains unresolved.

Prior to 2018,¹¹ FDLE had 24 working hours¹² (i.e. three business days) to determine whether a person was prohibited from purchasing a firearm, identical to the requirement under Federal law. If FDLE was unable to determine whether a person was prohibited from purchasing a firearm within 24 working hours, FDLE was required to provide an FFL with a conditional approval, which authorized the FFL to transfer a firearm to a purchaser. If FDLE determined, subsequent to the firearm transfer, that a person was actually prohibited from purchasing a firearm, FDLE was required to revoke the conditional approval and send a “weapons retrieval” notification of such revocation to ATF and local law

⁷ A person who holds a permit to possess or acquire a firearm from certain states is exempt from Federal background check requirements. 18 U.S.C. §922(t)(3).

⁸ 18 U.S.C. §922(t). If a purchaser is under 21 and a background check identifies a potentially disqualifying juvenile offense, an FFL must wait 10 business days prior to transferring a firearm by default if the status of the potentially disqualifying offense is not resolved.

⁹ S. 790.0655(1)(a), F.S.

¹⁰ Florida Department of Law Enforcement, *Firearm Transaction Decisions*, <https://www.fdle.state.fl.us/FPP/FAQs3.aspx> (last visited Feb. 21, 2024).

¹¹ See Ch. 2018-3, Laws of Fla.

¹² “Working hours” means the hours from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. S. 790.065(2)(c)2., F.S.

enforcement agencies with jurisdiction over the purchaser.¹³ The ATF or local law enforcement agency was then required to retrieve the firearm from the purchaser.¹⁴

Mandatory Waiting Period

Federal Law

Federal law does *not* require a minimum waiting period between the purchase and delivery of a firearm from an FFL. Under Federal law, an FFL may transfer a firearm to a purchaser as soon as he or she successfully completes a background check.¹⁵ As noted above, under Federal law, if the background check is not completed within three business days, the FFL may transfer a firearm to a purchaser by default unless a state law provides otherwise.¹⁶

Florida Law

Florida Constitution

Article I, section 8(b) of the Florida Constitution requires a mandatory waiting period of three days, excluding weekends and legal holidays, between the purchase¹⁷ and delivery at retail of any handgun.¹⁸ The mandatory waiting period does *not* apply if the purchaser of a handgun holds a concealed weapons license or if the transaction involves the trade in of a handgun.¹⁹ The Florida Constitution does *not* require a mandatory waiting period for the retail purchase of a long gun, such as a rifle or shotgun.

Additionally, article VIII, section 5(b) of the Florida Constitution authorizes each county to require a criminal history records check and a three to five day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this section, the term “sale” means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access.²⁰ A person who holds a concealed weapons license is not subject to such a mandatory waiting period imposed by a county.²¹

Florida Statute

Section 790.0655, F.S.

Section 790.0655, F.S., requires a mandatory waiting period between the purchase²² and delivery of a firearm²³ from an FFL of at least three days, excluding weekends and legal holidays, or until the completion of a background check, *whichever occurs later*. The three day waiting period does not apply:

- When a firearm is being purchased by a holder of a concealed weapons or concealed firearms license issued under s. 790.06, F.S.;
- To a trade-in of another firearm;

¹³ S. 790.065(2)(c)7.b., F.S. Florida Department of Law Enforcement, Agency Analysis of HB 17, p.2 (Oct.12, 2023).

¹⁴ Prior to 2018, FDLE issued an average of 311 firearm retrieval orders annually. Since 2018, FDLE issued an average of 15 fire arm retrieval orders annually. Florida Department of Law Enforcement, Agency Analysis of 2024 House Bill 17, p. 5 (Oct. 12, 2023).

¹⁵ 18 U.S.C. § 922(t)(1).

¹⁶ *Id.* If a purchaser is under 21 and a background check identifies a potentially disqualifying juvenile offense, an FFL must wait 10 business days prior to transferring a firearm by default if the status of the potentially disqualifying offense is not resolved.

¹⁷ “Purchase” means the transfer of money or other valuable consideration to the retailer. Art. I, s. 8(b), Fla. Const.

¹⁸ “Handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. *Id.*

¹⁹ Art. I, s. 8(b) and (d), Fla. Const.

²⁰ Art. VIII, s. 5(b), Fla. Const.

²¹ *Id.*

²² “Purchase” means the transfer of money or other valuable consideration to the retailer. S. 790.0655(1)(a), F.S.

²³ “Firearm” means 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. S. 790.001(9), F.S.

- To the purchase of a rifle or shotgun, if a person:
 - Successfully completes a 16 hour hunter safety course and possesses a hunter safety certification card issued under s. 379.3581, F.S., or
 - Is exempt from the hunter safety course requirements under s. 379.3581, F.S., and holds a valid Florida hunting license; or
- When a rifle or shotgun is being purchased by a law enforcement officer or correctional officer, as those terms are defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S., or a servicemember as defined in s. 250.01, F.S.²⁴

Under current law, it is a third degree felony:²⁵

- For any retailer,²⁶ or any employee or agent of a retailer, to deliver a firearm before the expiration of the waiting period, subject to the statutory exceptions; or
- For a purchaser to obtain delivery of a firearm by fraud, false pretense, or false representation.²⁷

Effect of Proposed Changes

CS/HB 17 amends s. 790.0655, F.S., to require the mandatory waiting period for all firearm purchases made from an FFL to expire three days after the purchase of a firearm, excluding weekends and legal holidays, regardless of whether a background check has been completed. Under the bill, and in compliance with s. 790.065, F.S., and Federal law, if the FDLE is unable to determine whether a person is prohibited from purchasing a firearm from an FFL within the three day period, FDLE must issue a conditional approval authorizing a purchaser to take delivery of a firearm. If FDLE subsequently determines that a purchaser is not authorized to possess a firearm, FDLE is required to notify ATF and a local law enforcement agency to retrieve the firearm.

The bill retains exceptions to the three day waiting period in current law for a firearm purchase from an FFL by a person who holds a concealed weapons license under s. 790.06, F.S.; to the trade-in of another firearm; or to the purchase of a rifle or shotgun by a law enforcement officer, correctional officer, or person who has successfully completed a specified hunter safety course or who is exempt from such requirements.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 790.0655, F.S., relating to purchase and delivery of firearms; mandatory waiting period; exceptions; penalties.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

²⁴ S. 790.0655(2), F.S.

²⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²⁶ "Retailer" means and includes a licensed importer, licensed manufacturer, or licensed dealer engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13), F.S.

²⁷ S. 790.0655(3), F.S.

FDLE estimates that the bill will have a minimal fiscal impact and that any increase in workload will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a fiscal impact on local governments since it may require local law enforcement agencies to conduct more firearm retrievals.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on FFLs as it authorizes an FFL to complete a firearm transaction in a specified time period of 24 working hours.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it required a mandatory three day waiting period for all firearms, rather than authorizing a firearm to be released upon completion of a background check or three days, whichever occurs earlier.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.