

1989

Session Law 89-191

Florida Senate & House of Representatives

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H 497 GENERAL BILL/CS/CS/2ND ENG by Appropriations; Criminal Justice; Silver; Guber and others (Compare H 88, S 945, S 999)
Firearm Purchases/Records Check: (THIS BILL COMBINES H 497,88) creates provision re sale & delivery of firearms; requires criminal history records check; provides fees; requires Law Enforcement Dept. to establish toll-free numbers; establishes procedures; provides exemptions & penalties; provides for contingent expiration; authorizes positions. Creates 790.065. Appropriation: \$1,178,737. Effective Date: 10/01/90.

03/03/89 HOUSE Prefiled
 03/09/89 HOUSE Referred to Criminal Justice; Appropriations
 03/15/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment; On subcommittee agenda—Criminal Justice, 03/21/89, 1:00 pm, 217-HOB; On Committee agenda, pending subcommittee action—Criminal Justice, 03/21/89, 3:00 pm, 217-HOB—Not received
 04/04/89 HOUSE Introduced, referred to Criminal Justice; Appropriations—HJ 53; Subreferred to Subcommittee on Prosecution and Punishment
 04/25/89 HOUSE On Committee agenda—Criminal Justice, 04/27/89, 1:30 pm, 21-HOB if withdrawn from subcommittee—Temporarily passed
 04/28/89 HOUSE On Committee agenda—Criminal Justice, 05/02/89, 8:30 am, 21-HOB
 05/02/89 HOUSE Preliminary Committee Action by Criminal Justice: Favorable as a CS combined with HB 88
 05/15/89 HOUSE CS combines this bill and 88; Combined CS additional reference(s): Finance & Taxation; Comm. Report: CS by Criminal Justice—HJ 487; CS read first time—HJ 484; Now in Finance & Taxation—HJ 487
 05/17/89 HOUSE Withdrawn from Finance & Taxation—HJ 513; Now in Appropriations
 05/22/89 HOUSE On Committee agenda—Appropriations, 05/23/89, 8:00 am, 21-HOB
 05/23/89 HOUSE Preliminary Committee Action by Appropriations: Favorable as a CS
 05/24/89 HOUSE Comm. Report: CS/CS by Appropriations, placed on Calendar—HJ 630; CS read first time—HJ 628
 05/25/89 HOUSE Placed on Special Order Calendar
 05/30/89 HOUSE Read second time—HJ 780; Amendments adopted; Read third time: CS passed as amended; YEAS 103 NAYS 9—HJ 782
 05/30/89 SENATE In Messages
 05/31/89 SENATE Received, referred to Judiciary—Criminal; Finance, Taxation and Claims—SJ 620
 06/01/89 SENATE On Committee agenda—Judiciary—Criminal, 06/01/89, 6:00 pm, Room-1C-(309)—SJ 732; Comm. Report: Favorable with 2 amendment(s) by Judiciary—Criminal—SJ 686; Now in Finance, Taxation and Claims—SJ 686
 06/02/89 SENATE Withdrawn from Finance, Taxation and Claims; Placed on Special Order Calendar—SJ 863; Amendment pending—SJ 897; CS passed as amended; YEAS 33 NAYS 0—SJ 906
 06/02/89 HOUSE In Messages
 06/03/89 HOUSE Was taken up—HJ 1555; Concurred; CS passed as further amended; YEAS 111 NAYS 1—HJ 1557
 06/03/89 Ordered engrossed, then enrolled
 06/13/89 Signed by Officers and presented to Governor
 06/28/89 Approved by Governor; Chapter No. 89-191

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NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0497c.cj
DATE: June 30, 1989

HOUSE OF REPRESENTATIVES
CRIMINAL JUSTICE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/HB 497 & 88

RELATING TO: Firearm Purchases

SPONSOR(S): Appropriations, Criminal Justice, Representatives Silver,
Guber and others

EFFECTIVE DATE: October 1, 1990 and the creation of the new section is
contingent on FDLE notifying all licensed importers,
dealers and manufacturers that the described procedures
are operational.

DATE BECAME LAW: June 28, 1989

CHAPTER #: ~~89-119~~, Laws of Florida [89-191]

COMPANION BILL(S): SB 945

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Currently, s. 790.33, F. S., provides that by a vote of a county commission, a county may impose a three day county wide waiting period for the purchase of handguns. The law does not provide for a criminal history background check to take place during this waiting period.

B. EFFECT OF PROPOSED CHANGES:

This law will require the Florida Department of Law Enforcement (FDLE) to establish procedures to insure that criminal history background checks will be conducted on all purchasers of firearms in Florida, except by licensed importers, dealers, manufacturers when selling to one another. There is also an exception to the background check if there is temporary or any other type of interrupted telephone service at the licensed premises due to the failure of the telephone company to provide service, or in the case of a natural disaster or any other type of emergency or if FDLE fails to comply with its obligations. In most cases, approval must be given to the dealer, importer, or manufacturer (the "licensee") no later than the end of the following business day.

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The licensee cannot transfer a firearm until he has obtained an identification form from the potential buyer or transferee and has inspected proper identification, including photo identification, collected a \$10 fee from the transferee, requested the FDLE to conduct a criminal history background check, received a unique approval and recorded the same on a consent form.

When FDLE gets a request to conduct a history check, it shall immediately and, except as noted below, review its criminal history records to determine if the transferee is prohibited from possessing a firearm under Florida or Federal law, inform the licensee that the transfer is approved or prohibited and issue a number indicating approval or non-approval. If the FDLE cannot so issue a number, it has until the end of the next business day to do so. If it fails to do so, the transfer can take place regardless.

Regarding records retention, the FDLE must destroy records of those whom it has checked, if approved, within 48 hours. It may keep records of the approval and non-approval numbers issued for one year.

The FDLE can promulgate rules to enforce the provisions regarding records and anyone denied the right to receive a firearm can request a records review under current FDLE procedures.

Third degree felony penalties are prescribed for:

a transferee who requests information under false pretenses or who willfully and intentionally disseminates criminal history record information to anyone other than the subject of the information or who violates any provision of subsection 1 of the bill; or

a buyer or transferee who is convicted of willfully and knowingly providing false information or identification in order to obtain a firearm.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 creates the procedures and the penalties for conducting criminal history background checks.

Section 2 appropriates \$1,178,737 to FDLE and authorizes 35 positions to administer the act. Any funds not so administered shall be used in the following order: to insure that there is not any degradation in the FCIC information to criminal justice agencies, to purchase soft body armor for new recruits and to assist law enforcement drug task forces.

Section 3 provides an effective date of October 1, 1990 for the act but section 790.065, as it is created by the bill, becomes effective when the FDLE has notified all licensed importers, manufacturers and dealers in writing that the procedures and toll-free number as described are operational.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

For fiscal year 1990-91, \$1,178,737 is appropriated to administer the act. The fee the first year for conducting the checks is \$10 and for subsequent years \$3 until sunset or repeal of the section. FDLE says that the fees will sustain the program's costs.

2. Recurring or Annualized Continuation Effects:

\$1,178,737

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

Section 2 of the bill appropriates \$1,178,737 to FDLE to administer the program. If there are funds left over after administration of the program, they are to go to ensure that there has not been any degradation of the services provided by FCIC to criminal justice agencies, for the purchase of soft body armor for new recruits, and for law enforcement drug task forces. As discussed above, the \$10 fee for the first year and the \$3 fee for subsequent years should cover the costs of administering the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the state comprehensive plan goals of deterring criminal behavior.

IV. COMMENTS:

The bill is consistent with the committee mission statement in that it pertains to the regulation of firearms.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Robin S. Hassler
Robin S. Hassler

Staff Director:

Robin S. Hassler
Robin S. Hassler

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

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DATE: May 30, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Shanley</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav/2 amend.</u>
2. _____	_____	2. <u>FTC</u>	<u>Withdrawn</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Handguns/Transfer

BILL NO. AND SPONSOR:

CS/CS/HB 497 & 88 by Committees on Appropriation, Criminal Justice & Reps. Silver, Guber & others

I. SUMMARY:

A. Present Situation:

Section 790.33, F.S., currently provides that the counties of the state may, by a majority vote of the county commission, impose a waiting period of up to three working days between the purchase and delivery of a handgun. Ordinances authorized by s. 790.33, F.S., shall not require any reporting or notification to any source outside the retail establishment, but records of handgun sales must be available for inspection during normal business hours by any law enforcement agency. Exempt from any waiting period are individuals who are licensed to carry concealed firearms, individuals who lawfully already own another firearm and who show a sales receipt for another firearm; who are known to own another firearm through a prior purchase from the retail establishment; or who have another firearm for trade-in. A law enforcement or correctional officer as defined in s. 943.10, F.S., and a law enforcement agency as defined in s. 934.02, F.S., are also exempt, among others.

B. Effect of Proposed Changes:

CS/CS/HB 497 & 88 creates s. 790.065, F.S., which sets forth procedures to be implemented by the Florida Department of Law Enforcement (FDLE) and licensed importers, licensed manufacturers or licensed dealers in initiating an instant background check of potential firearm buyers or transferees. Such potential firearm buyers or transferees would not include licensed importers, licensed manufacturers, licensed dealers or licensed collectors. The bill would require record checks for the purchase or transfer of all firearms rather than solely for handguns.

Under the bill, the licensed importer, licensed manufacturer, or licensed dealer would initially be required to provide a form, promulgated by FDLE, which would contain specified personal data to be provided by the buyer or transferee. In addition, the licensees would be required to inspect proper identification (including a photograph). Any potential buyer or transferee who is convicted of willfully and knowingly providing false information or identification to the licensees would commit a third degree felony punishable as provided in s. 775.082 or s. 775.083.

The licensees would be further required to request, through a toll-free telephone call operational seven days a week, 24 hours a day, that FDLE conduct a criminal history record check. This inquiry would ascertain whether the buyer or transferee is prohibited from receipt or possession of a firearm under Florida and federal law. These record checks would be financed by a fee to be collected from the potential buyer by the

licensees for the amount of \$10 during the program's first year of operation, and no more than \$3 thereafter until the sunset or repeal of sale and delivery provisions.

CS/CS/HB 497 & 88 establishes specific procedures to be followed regarding approval and denial of purchases and transfers of firearms as well as the confidentiality of certain records. Any information designated confidential and exempt from s. 119.07(1) may not be disclosed by FDLE or any other officer or employee thereof to any person or to another agency. Records destruction procedures and other maintenance requirements are provided. Any officer or employee or former officer or employee of FDLE or a law enforcement agency who violates these procedures would commit a third degree felony.

Any person who has been denied the right to receive or purchase a firearm under procedures outlined in this bill may request the amendment of the particular record by petitioning FDLE. FDLE would be required to destroy any information derived from the criminal history check should the record as corrected subsequent to petition demonstrate that the petitioner is not prohibited from receipt or possession of a firearm.

The bill provides that it would be unlawful for any licensed dealer, licensed manufacturer, or licensed importer to willfully and intentionally request criminal history record information under false pretenses, or to willfully and intentionally disseminate criminal history record information to any person other than the subject of such information. A violation constitutes a third degree felony. The bill further provides that any licensed dealer, licensed manufacturer, or licensed importer who is convicted of violating provisions concerning the required instant records check, would commit a third degree felony. Any employee or agency of these licensees who is convicted of violating such an instant records check would similarly commit a third degree felony.

FDLE would be required to promulgate regulations to ensure the identity, confidentiality, and security of all records and data. The record check procedures would become effective upon notification in writing by FDLE to all licensed importers, licensed manufacturers, and licensed dealers that the procedures and toll-free number are operational.

CS/CS/HB 497 & 88 also provides circumstances during which licensees are not required to comply with the listed procedures, such as (1) electronic failure; (2) an emergency beyond the control of FDLE; and (3) telephone failure or unavailability of telephone service in certain areas or interruption of phone service due to certain emergencies.

Compliance with the provisions of Chapter 790 would constitute a complete defense to any claim or cause of action under the laws of any state for damages arising from the importation or manufacture, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, of any firearm which has been shipped or transported in interstate or foreign commerce.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Potential buyers would be required to pay licensees a \$10 fee during the first year of the records check program. Thereafter, a \$3 fee will be charged until the records check provisions sunset or are repealed.

B. Government:

According to FDLE, implementation of the instant records check program will impact upon salaries and benefits, expenses and OCO for the amount of nearly \$991,745. FDLE also estimates that an additional \$186,942 may potentially be required for a further computer capacity upgrade should the instant records checks impact upon law enforcement operational information needs. FDLE anticipates that these costs will be offset by the \$10 and later \$3 fees to be collected from potential buyers.

Although the bill provides for the availability of a toll-free telephone number 24 hours a day, seven days a week, the FDLE estimates are actually based upon a telephone number to be operational 16 hours each day.

III. COMMENTS:

This bill would not appear to authorize the delivery of a handgun prior to expiration of a "waiting-period" in any county having such an ordinance under current law.

By using the term "sunset" in s. 790.065(13), the bill apparently intends to provide for the repeal of authority at the state level for instant records checks, upon the effective date of any federal law enacted to require similar checks.

FDLE has indicated that the bill will in no way guarantee instant positive identification. This will only occur through the comparison of fingerprints.

Additionally, these criminal history record checks will be predicated on information available on-line at the time of the inquiry.

IV. AMENDMENTS:**#1 by Judiciary-Criminal:**

- * Fees to be collected from potential buyers for processing criminal history checks would be deposited into the Department of Law Enforcement Operating Trust Fund.
- * Licensees would be required to request, by means of a toll-free telephone number to be operational 7 days a week and 16 hours each day, that FDLE conduct a check of information as reported and reflected in Florida Crime Information Center and National Crime Information Center systems as of the request date.
- * The licensees would be informed of history check results and provided a unique approval number or non-approval number.
- * The Department of Law Enforcement would be required to destroy history record information, excluding approval and non-approval numbers, after communication of such information to the licensee and, in any event, within 48 hours after the day of receipt of licensee's request.
- * A third degree felony would be committed by present or former officers or employees of the Department of Law Enforcement who intentionally and maliciously violate the confidentiality and records destruction provisions.
- * Any person who is denied the right to receive or purchase a firearm may request a records review in accordance with FDLE rules.
- * FDLE and its agents and employees would not be liable under the laws of any state for damages arising from its actions which are in compliance with the provisions of the bill.

REVISED: _____

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- * The instant check provisions would expire on the effective date of federal law which would provide access to national criminal history information and require national history checks on potential buyers and transferees.
- * The sum of \$1,178,737 would be appropriated and 35 positions authorized for FDLE to administer the provisions of the bill. Surplus funds would be dedicated to specified concerns.
- * The effective date of the bill would be October 1, 1990.

#2 by Judiciary-Criminal:
Title.