

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Watson, B. offered the following:

Substitute Amendment for Amendment (436375) (with title amendment)

Remove lines 426-491 and insert:

Section 6. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 790.065, Florida Statutes, are amended to read:

790.065 Sale, and delivery, and possession of firearms.-

(1)(a)1. A licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer,

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

14 licensed dealer, or licensed collector, who is less than 21
15 years of age, except that a licensed importer, licensed
16 manufacturer, or licensed dealer may sell or deliver a rifle or
17 shotgun to a person who is 18 years of age or older and is a law
18 enforcement officer or correctional officer as defined in s.
19 943.10 or on active duty in the Armed Forces of the United
20 States or full-time duty in the National Guard.

21 2. For a person 21 years of age or older, or 18 years of
22 age or older and meeting an exception under this paragraph, a
23 licensed importer, licensed manufacturer, or licensed dealer may
24 not sell or deliver from her or his inventory at her or his
25 licensed premises any firearm to another person, other than a
26 licensed importer, licensed manufacturer, licensed dealer, or
27 licensed collector until she or he has:

28 a.1. Obtained a completed form from the potential buyer or
29 transferee, which form shall have been promulgated by the
30 Department of Law Enforcement and provided by the licensed
31 importer, licensed manufacturer, or licensed dealer, which shall
32 include the name, date of birth, gender, race, and social
33 security number or other identification number of such potential
34 buyer or transferee and has inspected proper identification
35 including an identification containing a photograph of the
36 potential buyer or transferee.

37 b.2. Collected a fee from the potential buyer for
38 processing the criminal history check of the potential buyer.

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

39 The fee shall be established by the Department of Law
40 Enforcement and may not exceed \$8 per transaction. The
41 Department of Law Enforcement may reduce, or suspend collection
42 of, the fee to reflect payment received from the Federal
43 Government applied to the cost of maintaining the criminal
44 history check system established by this section as a means of
45 facilitating or supplementing the National Instant Criminal
46 Background Check System. The Department of Law Enforcement
47 shall, by rule, establish procedures for the fees to be
48 transmitted by the licensee to the Department of Law
49 Enforcement. All such fees shall be deposited into the
50 Department of Law Enforcement Operating Trust Fund, but shall be
51 segregated from all other funds deposited into such trust fund
52 and must be accounted for separately. Such segregated funds must
53 not be used for any purpose other than the operation of the
54 criminal history checks required by this section. The Department
55 of Law Enforcement, each year prior to February 1, shall make a
56 full accounting of all receipts and expenditures of such funds
57 to the President of the Senate, the Speaker of the House of
58 Representatives, the majority and minority leaders of each house
59 of the Legislature, and the chairs of the appropriations
60 committees of each house of the Legislature. In the event that
61 the cumulative amount of funds collected exceeds the cumulative
62 amount of expenditures by more than \$2.5 million, excess funds

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

63 may be used for the purpose of purchasing soft body armor for
64 law enforcement officers.

65 ~~c.3.~~ Requested, by means of a toll-free telephone call,
66 the Department of Law Enforcement to conduct a check of the
67 information as reported and reflected in the Florida Crime
68 Information Center and National Crime Information Center systems
69 as of the date of the request.

70 ~~d.4.~~ Received a unique approval number for that inquiry
71 from the Department of Law Enforcement, and recorded the date
72 and such number on the consent form.

73 (2) Upon receipt of a request for a criminal history
74 record check, the Department of Law Enforcement shall, during
75 the licensee's call or by return call, forthwith:

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

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

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

82 3. Has had adjudication of guilt withheld or imposition of
83 sentence suspended on any felony or misdemeanor crime of
84 domestic violence unless 3 years have elapsed since probation or
85 any other conditions set by the court have been fulfilled or
86 expunction has occurred; or

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

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

91 a. As used in this subparagraph, "adjudicated mentally
92 defective" means a determination by a court that a person, as a
93 result of marked subnormal intelligence, or mental illness,
94 incompetency, condition, or disease, is a danger to himself or
95 herself or to others or lacks the mental capacity to contract or
96 manage his or her own affairs. The phrase includes a judicial
97 finding of incapacity under s. 744.331(6)(a), an acquittal by
98 reason of insanity of a person charged with a criminal offense,
99 and a judicial finding that a criminal defendant is not
100 competent to stand trial.

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

103 (I) Involuntary commitment, commitment for mental
104 defectiveness or mental illness, and commitment for substance
105 abuse. The phrase includes involuntary inpatient placement as
106 defined in s. 394.467, involuntary outpatient placement as
107 defined in s. 394.4655, involuntary assessment and stabilization
108 under s. 397.6818, and involuntary substance abuse treatment
109 under s. 397.6957, but does not include a person in a mental
110 institution for observation or discharged from a mental

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

111 institution based upon the initial review by the physician or a
112 voluntary admission to a mental institution; or

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

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

120 (B) The examining physician certified that if the person
121 did not agree to voluntary treatment, a petition for involuntary
122 outpatient or inpatient treatment would have been filed under s.
123 394.463(2)(g)4., or the examining physician certified that a
124 petition was filed and the person subsequently agreed to
125 voluntary treatment prior to a court hearing on the petition.

126 (C) Before agreeing to voluntary treatment, the person
127 received written notice of that finding and certification, and
128 written notice that as a result of such finding, he or she may
129 be prohibited from purchasing or possessing a firearm, and may
130 not be eligible to apply for or retain a concealed weapon or
131 firearms license under s. 790.06 and the person acknowledged
132 such notice in writing, in substantially the following form:
133 "I understand that the doctor who examined me believes I am a
134 danger to myself or to others. I understand that if I do not
135 agree to voluntary treatment, a petition will be filed in court

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

136 to require me to receive involuntary treatment. I understand
137 that if that petition is filed, I have the right to contest it.
138 In the event a petition has been filed, I understand that I can
139 subsequently agree to voluntary treatment prior to a court
140 hearing. I understand that by agreeing to voluntary treatment in
141 either of these situations, I may be prohibited from buying or
142 possessing firearms and from applying for or retaining a
143 concealed weapons or firearms license until I apply for and
144 receive relief from that restriction under Florida law."

145 (D) A judge or a magistrate has, pursuant to sub-sub-
146 subparagraph c.(II), reviewed the record of the finding,
147 certification, notice, and written acknowledgment classifying
148 the person as an imminent danger to himself or herself or
149 others, and ordered that such record be submitted to the
150 department. At the hearing, or no more than 20 days thereafter,
151 the judge or magistrate may also inquire into whether the person
152 possesses any weapons or firearms. If so, the court shall order
153 an inventory of said weapons to be entered into the record and
154 should a friend or relative be unable or unwilling to keep the
155 weapons outside of the person's control, the court may either
156 order these items be placed with or seized by the sheriff for
157 the county in which the respondent resides.

158 c. In order to check for these conditions, the department
159 shall compile and maintain an automated database of persons who
160 are prohibited from purchasing a firearm based on court records

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

161 of adjudications of mental defectiveness or commitments to
162 mental institutions. All Baker Act service providers shall fully
163 comply with the reporting provisions of this chapter by January
164 1, 2019. The Department of Children and Families and the
165 Department of Law Enforcement shall enforce the provisions of
166 this chapter relating to purchase and possession of firearms by
167 persons prohibited from doing so due to mental health issues.
168 Failure by such a service provider to comply after a finding by
169 the Department of Children and Families and the Department of
170 Law Enforcement shall result in a fine of \$100,000, a subsequent
171 finding shall result in a \$250,000 fine, and a third finding may
172 result in the suspension of the provider's license by the
173 Department of Children and Families.

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

181 (II) For persons committed to a mental institution
182 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
183 the person's agreement to voluntary admission, a record of the
184 finding, certification, notice, and written acknowledgment must
185 be filed by the administrator of the receiving or treatment

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

186 facility, as defined in s. 394.455, with the clerk of the court
187 for the county in which the involuntary examination under s.
188 394.463 occurred. No fee shall be charged for the filing under
189 this sub-sub-subparagraph. The clerk must present the records to
190 a judge or magistrate within 24 hours after receipt of the
191 records. A judge or magistrate is required and has the lawful
192 authority to review the records ex parte and, if the judge or
193 magistrate determines that the record supports the classifying
194 of the person as an imminent danger to himself or herself or
195 others, to order that the record be submitted to the department.
196 If a judge or magistrate orders the submittal of the record to
197 the department, the record must be submitted to the department
198 within 24 hours.

199 d. A person who has been adjudicated mentally defective or
200 committed to a mental institution, as those terms are defined in
201 this paragraph, may petition the court that made the
202 adjudication or commitment, or the court that ordered that the
203 record be submitted to the department pursuant to sub-sub-
204 subparagraph c.(II), for relief from the firearm disabilities
205 imposed by such adjudication or commitment. A copy of the
206 petition shall be served on the state attorney for the county in
207 which the person was adjudicated or committed. The state
208 attorney may object to and present evidence relevant to the
209 relief sought by the petition. The hearing on the petition may
210 be open or closed as the petitioner may choose. The petitioner

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

211 may present evidence and subpoena witnesses to appear at the
212 hearing on the petition. The petitioner may confront and cross-
213 examine witnesses called by the state attorney. A record of the
214 hearing shall be made by a certified court reporter or by court-
215 approved electronic means. The court shall make written findings
216 of fact and conclusions of law on the issues before it and issue
217 a final order. The court shall grant the relief requested in the
218 petition if the court finds, based on the evidence presented
219 with respect to the petitioner's reputation, the petitioner's
220 mental health record and, if applicable, criminal history
221 record, the circumstances surrounding the firearm disability,
222 and any other evidence in the record, that the petitioner will
223 not be likely to act in a manner that is dangerous to public
224 safety and that granting the relief would not be contrary to the
225 public interest. If the final order denies relief, the
226 petitioner may not petition again for relief from firearm
227 disabilities until 1 year after the date of the final order. The
228 petitioner may seek judicial review of a final order denying
229 relief in the district court of appeal having jurisdiction over
230 the court that issued the order. The review shall be conducted
231 de novo. Relief from a firearm disability granted under this
232 sub-subparagraph has no effect on the loss of civil rights,
233 including firearm rights, for any reason other than the
234 particular adjudication of mental defectiveness or commitment to
235 a mental institution from which relief is granted.

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

236 e. Upon receipt of proper notice of relief from firearm
237 disabilities granted under sub-subparagraph d., the department
238 shall delete any mental health record of the person granted
239 relief from the automated database of persons who are prohibited
240 from purchasing a firearm based on court records of
241 adjudications of mental defectiveness or commitments to mental
242 institutions.

243 f. The department is authorized to disclose data collected
244 pursuant to this subparagraph to agencies of the Federal
245 Government and other states for use exclusively in determining
246 the lawfulness of a firearm sale or transfer. The department is
247 also authorized to disclose this data to the Department of
248 Agriculture and Consumer Services for purposes of determining
249 eligibility for issuance of a concealed weapons or concealed
250 firearms license and for determining whether a basis exists for
251 revoking or suspending a previously issued license pursuant to
252 s. 790.06(10). When a potential buyer or transferee appeals a
253 nonapproval based on these records, the clerks of court and
254 mental institutions shall, upon request by the department,
255 provide information to help determine whether the potential
256 buyer or transferee is the same person as the subject of the
257 record. Photographs and any other data that could confirm or
258 negate identity must be made available to the department for
259 such purposes, notwithstanding any other provision of state law
260 to the contrary. Any such information that is made confidential

524889

Approved For Filing: 2/28/2018 6:54:48 PM

Amendment No.

261 or exempt from disclosure by law shall retain such confidential
262 or exempt status when transferred to the department.

263

264

265

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

266

Remove line 32 and insert:

267

21 years of age; providing exceptions; providing for the

268

seizure of weapons from persons voluntarily committed in

269

certain circumstances; providing penalties for certain

270

service providers that fail to comply with reporting

271

requirements; amending s.

524889

Approved For Filing: 2/28/2018 6:54:48 PM