

1                                   A bill to be entitled  
 2           An act relating to the sale and delivery of firearms;  
 3           amending s. 790.065, F.S.; prohibiting persons  
 4           convicted of misdemeanor hate crime offenses from  
 5           purchasing firearms; amending ss. 493.6108, 790.06,  
 6           and 943.0583, F.S.; conforming cross-references;  
 7           providing an effective date.

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 9   Be It Enacted by the Legislature of the State of Florida:

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 11           Section 1. Paragraph (a) of subsection (2) of section  
 12   790.065, Florida Statutes, is amended to read:

13           790.065 Sale and delivery of firearms.—

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

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

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

21           2. Has been convicted of a misdemeanor crime of domestic  
 22   violence~~7~~ and, therefore, is prohibited from purchasing a  
 23   firearm;

24           3. Has had adjudication of guilt withheld or imposition of  
 25   sentence suspended on any felony or misdemeanor crime of

26 domestic violence unless 3 years have elapsed since probation or  
27 any other conditions set by the court have been fulfilled or  
28 expunction has occurred; ~~or~~

29 4. Has been convicted of a misdemeanor crime that is  
30 required to be reported as a hate crime under s. 877.19 and,  
31 therefore, is prohibited from purchasing a firearm; or

32 5.4. Has been adjudicated mentally defective or has been  
33 committed to a mental institution by a court or as provided in  
34 sub-sub-subparagraph b.(II), and as a result is prohibited by  
35 state or federal law from purchasing a firearm.

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

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

48 (I) Involuntary commitment, commitment for mental  
49 defectiveness or mental illness, and commitment for substance  
50 abuse. The phrase includes involuntary inpatient placement under

51 ~~as defined in~~ s. 394.467, involuntary outpatient placement under  
52 ~~as defined in~~ s. 394.4655, involuntary assessment and  
53 stabilization under s. 397.6818, and involuntary substance abuse  
54 treatment under s. 397.6957, but does not include a person in a  
55 mental institution for observation or discharged from a mental  
56 institution based upon the initial review by the physician or a  
57 voluntary admission to a mental institution; or

58 (II) Notwithstanding sub-sub-subparagraph (I), voluntary  
59 admission to a mental institution for outpatient or inpatient  
60 treatment of a person who had an involuntary examination under  
61 s. 394.463 if, ~~where~~ each of the following conditions have been  
62 met:

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

65 (B) The examining physician certified that if the person  
66 did not agree to voluntary treatment, a petition for involuntary  
67 outpatient or inpatient treatment would have been filed under s.  
68 394.463(2)(g)4., or the examining physician certified that a  
69 petition was filed and the person subsequently agreed to  
70 voluntary treatment prior to a court hearing on the petition.

71 (C) Before agreeing to voluntary treatment, the person  
72 received written notice of that finding and certification, and  
73 written notice that as a result of such finding, he or she may  
74 be prohibited from purchasing a firearm, and may not be eligible  
75 to apply for or retain a concealed weapon or firearms license

76 | under s. 790.06 and the person acknowledged such notice in  
77 | writing, in substantially the following form:

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

90 | (D) A judge or a magistrate has, pursuant to sub-sub-  
91 | subparagraph c.(II), reviewed the record of the finding,  
92 | certification, notice, and written acknowledgment classifying  
93 | the person as an imminent danger to himself or herself or  
94 | others, and ordered that such record be submitted to the  
95 | department.

96 | c. In order to check for these conditions, the department  
97 | shall compile and maintain an automated database of persons who  
98 | are prohibited from purchasing a firearm based on court records  
99 | of adjudications of mental defectiveness or commitments to  
100 | mental institutions.

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

108 (II) For persons committed to a mental institution  
109 pursuant to sub-sub-subparagraph b.(II), within 24 hours after  
110 the person's agreement to voluntary admission, a record of the  
111 finding, certification, notice, and written acknowledgment must  
112 be filed by the administrator of the receiving or treatment  
113 facility, as defined in s. 394.455, with the clerk of the court  
114 for the county in which the involuntary examination under s.  
115 394.463 occurred. No fee shall be charged for the filing under  
116 this sub-sub-subparagraph. The clerk must present the records to  
117 a judge or magistrate within 24 hours after receipt of the  
118 records. A judge or magistrate is required and has the lawful  
119 authority to review the records ex parte and, if the judge or  
120 magistrate determines that the record supports the classifying  
121 of the person as an imminent danger to himself or herself or  
122 others, to order that the record be submitted to the department.  
123 If a judge or magistrate orders the submittal of the record to  
124 the department, the record must be submitted to the department  
125 within 24 hours.

126 d. A person who has been adjudicated mentally defective or  
127 committed to a mental institution, as those terms are defined in  
128 this paragraph, may petition the court that made the  
129 adjudication or commitment, or the court that ordered that the  
130 record be submitted to the department pursuant to sub-sub-  
131 subparagraph c.(II), for relief from the firearm disabilities  
132 imposed by such adjudication or commitment. A copy of the  
133 petition shall be served on the state attorney for the county in  
134 which the person was adjudicated or committed. The state  
135 attorney may object to and present evidence relevant to the  
136 relief sought by the petition. The hearing on the petition may  
137 be open or closed as the petitioner may choose. The petitioner  
138 may present evidence and subpoena witnesses to appear at the  
139 hearing on the petition. The petitioner may confront and cross-  
140 examine witnesses called by the state attorney. A record of the  
141 hearing shall be made by a certified court reporter or by court-  
142 approved electronic means. The court shall make written findings  
143 of fact and conclusions of law on the issues before it and issue  
144 a final order. The court shall grant the relief requested in the  
145 petition if the court finds, based on the evidence presented  
146 with respect to the petitioner's reputation, the petitioner's  
147 mental health record and, if applicable, criminal history  
148 record, the circumstances surrounding the firearm disability,  
149 and any other evidence in the record, that the petitioner will  
150 not be likely to act in a manner that is dangerous to public

151 safety and that granting the relief would not be contrary to the  
152 public interest. If the final order denies relief, the  
153 petitioner may not petition again for relief from firearm  
154 disabilities until 1 year after the date of the final order. The  
155 petitioner may seek judicial review of a final order denying  
156 relief in the district court of appeal having jurisdiction over  
157 the court that issued the order. The review shall be conducted  
158 de novo. Relief from a firearm disability granted under this  
159 sub-subparagraph has no effect on the loss of civil rights,  
160 including firearm rights, for any reason other than the  
161 particular adjudication of mental defectiveness or commitment to  
162 a mental institution from which relief is granted.

163 e. Upon receipt of proper notice of relief from firearm  
164 disabilities granted under sub-subparagraph d., the department  
165 shall delete any mental health record of the person granted  
166 relief from the automated database of persons who are prohibited  
167 from purchasing a firearm based on court records of  
168 adjudications of mental defectiveness or commitments to mental  
169 institutions.

170 f. The department is authorized to disclose data collected  
171 pursuant to this subparagraph to agencies of the Federal  
172 Government and other states for use exclusively in determining  
173 the lawfulness of a firearm sale or transfer. The department is  
174 also authorized to disclose this data to the Department of  
175 Agriculture and Consumer Services for purposes of determining

176 eligibility for issuance of a concealed weapons or concealed  
177 firearms license and for determining whether a basis exists for  
178 revoking or suspending a previously issued license pursuant to  
179 s. 790.06(10). When a potential buyer or transferee appeals a  
180 nonapproval based on these records, the clerks of court and  
181 mental institutions shall, upon request by the department,  
182 provide information to help determine whether the potential  
183 buyer or transferee is the same person as the subject of the  
184 record. Photographs and any other data that could confirm or  
185 negate identity must be made available to the department for  
186 such purposes, notwithstanding any other provision of state law  
187 to the contrary. Any such information that is made confidential  
188 or exempt from disclosure by law shall retain such confidential  
189 or exempt status when transferred to the department.

190 Section 2. Subsection (3) of section 493.6108, Florida  
191 Statutes, is amended to read:

192 493.6108 Investigation of applicants by Department of  
193 Agriculture and Consumer Services.—

194 (3) The department must also investigate the mental  
195 history and current mental and emotional fitness of any Class  
196 "G" or Class "K" applicant and may deny a Class "G" or Class "K"  
197 license to anyone who has a history of mental illness or drug or  
198 alcohol abuse. Notwithstanding s. 790.065(2)(a)5.f. ~~s.~~  
199 ~~790.065(2)(a)4.f.~~, the Department of Law Enforcement is  
200 authorized, for the limited purpose of determining eligibility



201 of Class "G" or Class "K" applicants and licensees under this  
 202 chapter, to provide the department with mental health and  
 203 substance abuse data of individuals who are prohibited from  
 204 purchasing a firearm.

205 Section 3. Paragraphs (e), (i), and (j) of subsection (2)  
 206 of section 790.06, Florida Statutes, are amended to read:

207 790.06 License to carry concealed weapon or firearm.—

208 (2) The Department of Agriculture and Consumer Services  
 209 shall issue a license if the applicant:

210 (e) Has not been:

211 1. Found guilty of a crime under the provisions of chapter  
 212 893 or similar laws of any other state relating to controlled  
 213 substances within a 3-year period immediately preceding the date  
 214 on which the application is submitted; or

215 2. Committed for the abuse of a controlled substance under  
 216 chapter 397 or under the provisions of former chapter 396 or  
 217 similar laws of any other state. An applicant who has been  
 218 granted relief from firearms disabilities pursuant to s.  
 219 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law of  
 220 the state in which the commitment occurred is deemed not to be  
 221 committed for the abuse of a controlled substance under this  
 222 subparagraph;

223 (i) Has not been adjudicated an incapacitated person under  
 224 s. 744.331, or similar laws of any other state. An applicant who  
 225 has been granted relief from firearms disabilities pursuant to

226 s. 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law  
227 of the state in which the adjudication occurred is deemed not to  
228 have been adjudicated an incapacitated person under this  
229 paragraph;

230 (j) Has not been committed to a mental institution under  
231 chapter 394, or similar laws of any other state. An applicant  
232 who has been granted relief from firearms disabilities pursuant  
233 to s. 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the  
234 law of the state in which the commitment occurred is deemed not  
235 to have been committed in a mental institution under this  
236 paragraph;

237 Section 4. Subsection (3) of section 943.0583, Florida  
238 Statutes, is amended to read:

239 943.0583 Human trafficking victim expunction.—

240 (3) A person who is a victim of human trafficking may  
241 petition for the expunction of a criminal history record  
242 resulting from the arrest or filing of charges for an offense  
243 committed or reported to have been committed while the person  
244 was a victim of human trafficking, which offense was committed  
245 or reported to have been committed as a part of the human  
246 trafficking scheme of which the person was a victim or at the  
247 direction of an operator of the scheme, including, but not  
248 limited to, violations under chapters 796 and 847, without  
249 regard to the disposition of the arrest or of any charges.  
250 However, this section does not apply to any offense listed in s.

251 775.084(1)(b)1. Determination of the petition under this section  
252 should be by a preponderance of the evidence. A conviction  
253 expunged under this section is deemed to have been vacated due  
254 to a substantive defect in the underlying criminal proceedings.  
255 If a person is adjudicated not guilty by reason of insanity or  
256 is found to be incompetent to stand trial for any such charge,  
257 the expunction of the criminal history record may not prevent  
258 the entry of the judgment or finding in state and national  
259 databases for use in determining eligibility to purchase or  
260 possess a firearm or to carry a concealed firearm, as authorized  
261 in s. 790.065(2)(a)5.c. ~~s. 790.065(2)(a)4.e.~~ and 18 U.S.C. s.  
262 922(t), nor shall it prevent any governmental agency that is  
263 authorized by state or federal law to determine eligibility to  
264 purchase or possess a firearm or to carry a concealed firearm  
265 from accessing or using the record of the judgment or finding in  
266 the course of such agency's official duties.

267 Section 5. This act shall take effect October 1, 2019.