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CS/CS/HB 1355

2013 Legislature

1
2 An act relating to the purchase of firearms by
3 mentally ill persons; amending s. 790.065, F.S.;
4 providing conditions under which a person who has been
5 voluntarily admitted to a mental institution for
6 treatment and has undergone an involuntary examination
7 under the Baker Act may be prohibited from purchasing
8 a firearm; providing requirements for the examining
9 physician; providing for judicial review of certain
10 findings; providing specified notice requirements;
11 providing form and contents of notice; providing
12 requirements with respect to the filing of specified
13 records with the court and presentation of such
14 records to a judge or magistrate; providing lawful
15 authority of a judge or magistrate to review specified
16 records and order that such records be submitted to
17 the Department of Law Enforcement; providing a
18 timeframe for submission of records to the department
19 upon order by a judge or magistrate; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (a) of subsection (2) of section
25 790.065, Florida Statutes, is amended to read:
26 790.065 Sale and delivery of firearms.—

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

30 | (a) Review any records available to determine if the
31 | potential buyer or transferee:

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

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

36 | 3. Has had adjudication of guilt withheld or imposition of
37 | sentence suspended on any felony or misdemeanor crime of
38 | domestic violence unless 3 years have elapsed since probation or
39 | any other conditions set by the court have been fulfilled or
40 | expunction has occurred; or

41 | 4. Has been adjudicated mentally defective or has been
42 | committed to a mental institution by a court or as provided in
43 | sub-sub-subparagraph b.(II), and as a result is prohibited by
44 | state or federal law from purchasing a firearm.

45 | a. As used in this subparagraph, "adjudicated mentally
46 | defective" means a determination by a court that a person, as a
47 | result of marked subnormal intelligence, or mental illness,
48 | incompetency, condition, or disease, is a danger to himself or
49 | herself or to others or lacks the mental capacity to contract or
50 | manage his or her own affairs. The phrase includes a judicial
51 | finding of incapacity under s. 744.331(6)(a), an acquittal by
52 | reason of insanity of a person charged with a criminal offense,
53 | and a judicial finding that a criminal defendant is not
54 | competent to stand trial.

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

57 (I) Involuntary commitment, commitment for mental
58 defectiveness or mental illness, and commitment for substance
59 abuse. The phrase includes involuntary inpatient placement as
60 defined in s. 394.467, involuntary outpatient placement as
61 defined in s. 394.4655, involuntary assessment and stabilization
62 under s. 397.6818, and involuntary substance abuse treatment
63 under s. 397.6957, but does not include a person in a mental
64 institution for observation or discharged from a mental
65 institution based upon the initial review by the physician or a
66 voluntary admission to a mental institution; or-

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

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

74 (B) The examining physician certified that if the person
75 did not agree to voluntary treatment, a petition for involuntary
76 outpatient or inpatient treatment would have been filed under s.
77 394.463(2)(i)4., or the examining physician certified that a
78 petition was filed and the person subsequently agreed to
79 voluntary treatment prior to a court hearing on the petition.

80 (C) Before agreeing to voluntary treatment, the person
81 received written notice of that finding and certification, and
82 written notice that as a result of such finding, he or she may

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83 | be prohibited from purchasing a firearm, and may not be eligible
84 | to apply for or retain a concealed weapon or firearms license
85 | under s. 790.06 and the person acknowledged such notice in
86 | writing, in substantially the following form:

87 |
88 | "I understand that the doctor who examined me believes
89 | I am a danger to myself or to others. I understand
90 | that if I do not agree to voluntary treatment, a
91 | petition will be filed in court to require me to
92 | receive involuntary treatment. I understand that if
93 | that petition is filed, I have the right to contest
94 | it. In the event a petition has been filed, I
95 | understand that I can subsequently agree to voluntary
96 | treatment prior to a court hearing. I understand that
97 | by agreeing to voluntary treatment in either of these
98 | situations, I may be prohibited from buying firearms
99 | and from applying for or retaining a concealed weapons
100 | or firearms license until I apply for and receive
101 | relief from that restriction under Florida law."

102 |
103 | (D) A judge or a magistrate has, pursuant to sub-sub-
104 | subparagraph c.(II), reviewed the record of the finding,
105 | certification, notice, and written acknowledgement classifying
106 | the person as an imminent danger to himself or herself or
107 | others, and ordered that such record be submitted to the
108 | department.

109 | c. In order to check for these conditions, the department
110 | shall compile and maintain an automated database of persons who

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111 are prohibited from purchasing a firearm based on court records
112 of adjudications of mental defectiveness or commitments to
113 mental institutions.

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

121 (II) For persons committed to a mental institution
122 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
123 the person's agreement to voluntary admission, a record of the
124 finding, certification, notice, and written acknowledgement must
125 be filed by the administrator of the receiving or treatment
126 facility, as defined in s. 394.455, with the clerk of the court
127 for the county in which the involuntary examination under s.
128 394.463 occurred. No fee shall be charged for the filing under
129 this sub-sub-subparagraph. The clerk must present the records to
130 a judge or magistrate within 24 hours after receipt of the
131 records. A judge or magistrate is required and has the lawful
132 authority to review the records ex parte and, if the judge or
133 magistrate determines that the record supports the classifying
134 of the person as an imminent danger to himself or herself or
135 others, to order that the record be submitted to the department.
136 If a judge or magistrate orders the submittal of the record to
137 the department, the record must be submitted to the department
138 within 24 hours.

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139 | d. A person who has been adjudicated mentally defective or
140 | committed to a mental institution, as those terms are defined in
141 | this paragraph, may petition the circuit court that made the
142 | adjudication or commitment, or the court that ordered that the
143 | record be submitted to the department pursuant to sub-sub-
144 | subparagraph c.(II), for relief from the firearm disabilities
145 | imposed by such adjudication or commitment. A copy of the
146 | petition shall be served on the state attorney for the county in
147 | which the person was adjudicated or committed. The state
148 | attorney may object to and present evidence relevant to the
149 | relief sought by the petition. The hearing on the petition may
150 | be open or closed as the petitioner may choose. The petitioner
151 | may present evidence and subpoena witnesses to appear at the
152 | hearing on the petition. The petitioner may confront and cross-
153 | examine witnesses called by the state attorney. A record of the
154 | hearing shall be made by a certified court reporter or by court-
155 | approved electronic means. The court shall make written findings
156 | of fact and conclusions of law on the issues before it and issue
157 | a final order. The court shall grant the relief requested in the
158 | petition if the court finds, based on the evidence presented
159 | with respect to the petitioner's reputation, the petitioner's
160 | mental health record and, if applicable, criminal history
161 | record, the circumstances surrounding the firearm disability,
162 | and any other evidence in the record, that the petitioner will
163 | not be likely to act in a manner that is dangerous to public
164 | safety and that granting the relief would not be contrary to the
165 | public interest. If the final order denies relief, the
166 | petitioner may not petition again for relief from firearm

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167 disabilities until 1 year after the date of the final order. The
168 petitioner may seek judicial review of a final order denying
169 relief in the district court of appeal having jurisdiction over
170 the court that issued the order. The review shall be conducted
171 de novo. Relief from a firearm disability granted under this
172 sub-subparagraph has no effect on the loss of civil rights,
173 including firearm rights, for any reason other than the
174 particular adjudication of mental defectiveness or commitment to
175 a mental institution from which relief is granted.

176 e. Upon receipt of proper notice of relief from firearm
177 disabilities granted under sub-subparagraph d., the department
178 shall delete any mental health record of the person granted
179 relief from the automated database of persons who are prohibited
180 from purchasing a firearm based on court records of
181 adjudications of mental defectiveness or commitments to mental
182 institutions.

183 f. The department is authorized to disclose data ~~the~~
184 ~~collected pursuant to this subparagraph~~ data to agencies of the
185 Federal Government and other states for use exclusively in
186 determining the lawfulness of a firearm sale or transfer. The
187 department is also authorized to disclose this ~~any collected~~
188 data to the Department of Agriculture and Consumer Services for
189 purposes of determining eligibility for issuance of a concealed
190 weapons or concealed firearms license and for determining
191 whether a basis exists for revoking or suspending a previously
192 issued license pursuant to s. 790.06(10). When a potential buyer
193 or transferee appeals a nonapproval based on these records, the
194 clerks of court and mental institutions shall, upon request by

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195 | the department, provide information to help determine whether
196 | the potential buyer or transferee is the same person as the
197 | subject of the record. Photographs and any other data that could
198 | confirm or negate identity must be made available to the
199 | department for such purposes, notwithstanding any other
200 | provision of state law to the contrary. Any such information
201 | that is made confidential or exempt from disclosure by law shall
202 | retain such confidential or exempt status when transferred to
203 | the department.

204 | Section 2. This act shall take effect July 1, 2013.