

Firearms, date of repeal of firearm purchase program

Number: AGO 98-23

Date: March 24, 1998

Subject:

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Mr. James T. Moore
Commissioner, Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

RE: LAW ENFORCEMENT, DEPARTMENT OF--FIREARMS--WEAPONS--STATUTES--date of repeal of firearm purchase program. s. 790.065, Fla. Stat.

Dear Mr. Moore:

You ask substantially the following question:

Is section 790.065, Florida Statutes, repealed on the effective date of the federal law which provides access to national criminal history information and requires national history checks on potential buyers or transferees of firearms, or on October 1, 1999?

In sum:

Section 790.065, Florida Statutes, is repealed effective October 1, 1999.

Section 790.065, Florida Statutes, requires that all federally licensed firearms dealers, manufacturers and importers in Florida who sell to persons who are not licensed dealers, licensed importers, licensed manufacturers, or licensed collectors, must contact the Florida Department of Law Enforcement (department) prior to the sale or transfer of a firearm. A potential buyer must provide to the dealer specified information as well as a processing fee. The department then conducts a state and national criminal history record check to verify that the prospective buyer is eligible to purchase a firearm and then issues an approval, nonapproval or conditional nonapproval number.[1] A conditional nonapproval number is given when the department needs further information and will require additional time to ascertain that information.[2]

Section 790.065, Florida Statutes, was created in 1989 by Chapter 89-191, Laws of Florida. Section 1 of the 1989 act provides that "[t]his section expires on the effective date of federal law which provides access to national criminal history information and requires national criminal history checks on potential buyers or transferees of firearms." The section was subsequently amended in 1990 by Chapter 90-316, Laws of Florida, which provided that "[t]his act shall not be construed to nullify the expiration of s. 790.065, Florida Statutes, provided for in chapter 89-191, Laws of Florida." [3]

The statute was amended in 1992, but did not include a date for repeal.[4] Then in 1993, section 790.065, Florida Statutes, was again amended to increase the processing fee for criminal history checks and to require that the processing fee be kept separate from other funds and used only as specified. The 1993 legislation provided that the statute was repealed effective October 1, 1999.[5] Subsequent amendments to the statute have not addressed repeal.[6]

The Legislature in its last pronouncement on this matter has clearly stated that the statute stands repealed on October 1, 1999. The repeal is not contingent upon any action taken by the federal government. Had the Legislature determined to continue the provision making the repeal of the statute dependent upon the federal government's national program, it clearly could have done so. It did, in fact, provide for such a condition in 1990.

The language of the 1993 act providing for the repeal on October 1, 1999 constitutes the last expression by the Legislature on this issue. As such, it will prevail over any earlier provision.[7]

Accordingly, I am of the opinion that section 790.065, Florida Statutes, is repealed effective October 1, 1999.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] See s. 790.065(2), Fla. Stat.

[2] See s. 790.065(1) and (2), Fla. Stat.

[3] Section 3, Ch. 90-316, Laws of Florida.

[4] Chapter 92-183, Laws of Florida.

[5] Section 1, Ch. 93-197, Laws of Florida.

[6] See Chs. 94-256, 95-195, 95-430, 96-392, 96-406, 97-94, and 97-102, Laws of Florida.

[7] See *McKendry v. State*, 641 So. 2d 45 (Fla. 1994) (when two statutes are in conflict, later-promulgated statute should prevail as last expression of legislative intent); *Department of Health and Rehabilitative Services v. American Healthcorp of Vero Beach, Inc.*, 471 So. 2d 1312 (Fla. 1st DCA 1985), *opinion adopted*, 488 So. 2d 824 (Fla. 1986) (last expression of legislative will is law).