

1                                   A bill to be entitled  
 2           An act relating to weapons and firearms; creating s.  
 3           790.222, F.S.; defining the terms "assault weapon" and  
 4           "large-capacity detachable magazine"; prohibiting the  
 5           manufacture, importation, possession, purchase, sale, or  
 6           transfer of an assault weapon or large-capacity detachable  
 7           magazine; providing certain specified exceptions;  
 8           providing that a knowing violation of the act is a felony  
 9           of the second degree; providing penalties; requiring the  
 10          seizure and forfeiture of assault weapons and magazines  
 11          held in violation of the act or used in committing a  
 12          crime; requiring that seized weapons and magazines be  
 13          destroyed within a certain time period; authorizing  
 14          specified grace periods during which a person may lawfully  
 15          transfer an assault weapon or magazine or take certain  
 16          other actions; granting immunity from prosecution if a  
 17          person notifies a law enforcement agency that the person  
 18          will voluntarily surrender an assault weapon or magazine;  
 19          requiring licensed firearms dealers to post a notice of  
 20          the provisions of the act and the criminal penalties  
 21          imposed for a violation of the act; amending s. 775.087,  
 22          F.S.; increasing the minimum terms of imprisonment imposed  
 23          for possessing, discharging, or seriously harming another  
 24          with a semiautomatic firearm and its high-capacity  
 25          detachable box magazine or with a machine gun; authorizing  
 26          the court to impose an additional fine against a person  
 27          whose felony conviction is reclassified under certain  
 28          specified circumstances because of the person's possession

29 of a semiautomatic firearm and its high-capacity  
 30 detachable box magazine or a machine gun; amending s.  
 31 790.07, F.S.; providing that it is a second-degree felony  
 32 to possess a firearm while committing or attempting to  
 33 commit a felony; providing a first-degree felony penalty  
 34 for second or subsequent violation; providing effective  
 35 dates.

36  
 37 WHEREAS, the United States Congress passed, and the  
 38 President of the United States signed into law, the Federal  
 39 Assault Weapons Act on September 13, 1994, which prohibited the  
 40 use and possession of assault weapons, and

41 WHEREAS, this ban expired on September 13, 2004, as  
 42 Congress did not renew it, although President George W. Bush  
 43 agreed to sign the law if passed, and

44 WHEREAS, as a result of the expiration of the ban, UZI's,  
 45 AK-47's, and other semiautomatic weapons are now available for  
 46 purchase and possession in this state, and

47 WHEREAS, a Miami-Dade police officer was shot with a  
 48 semiautomatic assault weapon the day before the federal assault  
 49 weapon ban expired, and

50 WHEREAS, according to the United States Bureau of Justice  
 51 Statistics, in 2003, nine states regulated assault weapons, 38  
 52 states regulated machine guns, and 40 states regulated short-  
 53 barreled shotguns, and

54 WHEREAS, according to the United States Bureau of Alcohol,  
 55 Tobacco, Firearms and Explosives, assault weapons are preferred  
 56 by criminals rather than by law-abiding citizens eight to one,

57 NOW, THEREFORE,

58

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

60

61 Section 1. Effective January 1, 2006, section 790.222,  
62 Florida Statutes, is created to read:

63 790.222 Assault weapons and magazines; restrictions on  
64 transfer and possession.--

65 (1) DEFINITIONS.--As used in this section, the term:

66 (a) "Assault weapon" has the same meaning as provided in  
67 chapter 44 (commencing with s. 921) of Title 18 of the United  
68 States Code Annotated.

69 (b) "Large-capacity detachable magazine" or "magazine"  
70 means any ammunition-feeding device the function of which is to  
71 deliver one or more ammunition cartridges into the firing  
72 chamber, which can be removed from the firearm without the use  
73 of any tool and which has the capacity to hold more than 10  
74 rounds of ammunition.

75 (2) PROHIBITION.--Notwithstanding any other law to the  
76 contrary, effective January 1, 2006, a person may not  
77 manufacture, import, possess, purchase, sell, or transfer any  
78 assault weapon or large-capacity detachable magazine, except as  
79 specifically authorized in subsection (3) or subsection (6).

80 (3) EXCEPTIONS TO THE PROHIBITION.--Subsection (2) does  
81 not apply to:

82 (a) A person who is employed by a federal, state, county,  
83 or municipal law enforcement agency or a correctional agency  
84 where the assault weapon or magazine is for use in the

85 performance of the person's lawful duties;

86 (b) A person who is a member of the armed forces of the  
 87 United States, the organized reserves, or the Florida National  
 88 Guard while on official military duty, in authorized training  
 89 for official military duty, or subject to recall or mobilization  
 90 and under order to possess an assault weapon or magazine;

91 (c) A firearms manufacturer or dealer that is properly  
 92 licensed under federal and state law to supply assault weapons  
 93 or magazines to any branch of the armed services of the United  
 94 States or to a law enforcement agency in this state; or

95 (d) A licensed firearms dealer who sells a lawfully  
 96 possessed assault weapon or magazine to a licensed firearms  
 97 dealer in another state.

98 (4) PENALTIES.--A person who knowingly violates subsection  
 99 (2) commits a felony of the second degree, punishable as  
 100 provided in s. 775.082, s. 775.083, or s. 775.084.

101 (5) SEIZURE AND FORFEITURE OF ASSAULT WEAPONS.--

102 (a) An officer who makes an arrest for a violation of  
 103 subsection (2) or for any offense involving the use or attempted  
 104 use of an assault weapon or magazine shall take possession of  
 105 the assault weapon or magazine and retain it until after  
 106 disposition of the charge for which the person was arrested.

107 (b) If the person arrested is convicted or found guilty,  
 108 regardless of adjudication, of a violation of subsection (2) or  
 109 an offense involving the use or attempted use of an assault  
 110 weapon or magazine, the seized assault weapon or magazine is  
 111 forfeited to the state, with or without an order of forfeiture,  
 112 and must be handled as provided in paragraph (e).

113 (c) If the person arrested is acquitted of the charge of  
114 violating subsection (2) or an offense involving the use or  
115 attempted use of an assault weapon or magazine, the seized  
116 assault weapon or magazine:

117 1. Must be returned to the person upon order of the court  
118 if the person demonstrates lawful ownership or possession of the  
119 assault weapon or magazine in accordance with state and federal  
120 law.

121 2. Is forfeited to the state, with or without an order of  
122 forfeiture, and must be handled as provided in paragraph (e), if  
123 the person fails to demonstrate to the court lawful ownership or  
124 possession of the assault weapon or magazine in accordance with  
125 state and federal law within 10 days after acquittal or  
126 dismissal of the charges.

127 (d) If an assault weapon or magazine is in or comes into  
128 the possession of a law enforcement agency through capture,  
129 confiscation, surrender, abandonment, or rejection, or is left  
130 and not reclaimed, the assault weapon or magazine is forfeited  
131 to the state on January 31, 2006, or within 30 days after it  
132 comes into the law enforcement agency's possession, whichever  
133 occurs later, with or without an order of forfeiture, and must  
134 be handled as provided in paragraph (e).

135 (e) An assault weapon or magazine that is forfeited to the  
136 state must be destroyed within 60 days after the date it is  
137 forfeited to the state.

138 (6) GRACE PERIODS.--The prohibition on the transfer and  
139 possession of an assault weapon or magazine as provided in this  
140 section takes effect January 1, 2006, except that:

141 (a) Any person who had lawful possession of an assault  
 142 weapon or magazine in this state before January 1, 2006, has  
 143 until July 1, 2006, to:

144 1. Lawfully transfer the assault weapon or magazine to a  
 145 person outside this state or to an agency that may lawfully  
 146 possess an assault weapon or magazine;

147 2. Have the assault weapon or magazine modified to render  
 148 it permanently inoperable; or

149 3. Take other action to ensure that continued possession  
 150 of the assault weapon or magazine is not in violation of state  
 151 or federal law.

152 (b) Any person who comes into lawful possession of a  
 153 lawfully held assault weapon or magazine on or after January 1,  
 154 2006, has 60 days after the date of obtaining possession of the  
 155 assault weapon or magazine to:

156 1. Lawfully transfer the assault weapon or magazine to a  
 157 person outside this state or to an agency that may lawfully  
 158 possess an assault weapon or magazine;

159 2. Have the assault weapon or magazine modified to render  
 160 it permanently inoperable; or

161 3. Take other action to ensure that continued possession  
 162 of the assault weapon or magazine is not in violation of state  
 163 or federal law.

164  
 165 As used in this paragraph, the term "lawful possession of a  
 166 lawfully held assault weapon or magazine" includes an assault  
 167 weapon or magazine that is obtained through an estate, a gift, a  
 168 bequeathal, or an inheritance.

169       (7) IMMUNITY FROM PROSECUTION IF AN ASSAULT WEAPON IS  
170 VOLUNTARILY SURRENDERED.--

171       (a) A person who voluntarily surrenders an unlawfully  
172 possessed assault weapon or magazine in accordance with this  
173 subsection to a local or state law enforcement agency after  
174 giving the agency written notice of the intention to surrender  
175 the weapon or magazine and the date and time of the intended  
176 surrender is immune from prosecution for unlawful possession of  
177 the weapon or magazine.

178       (b) The notice must specify the type of assault weapon or  
179 magazine to be surrendered and the time, place, and date of the  
180 surrender. The date of surrender may not be more than 1 week  
181 after the date the notice is given.

182       (c) The assault weapon or magazine must be transported and  
183 surrendered unloaded and secured in a manner so that it is not  
184 readily accessible for use.

185       (d) Upon the request of the person surrendering an assault  
186 weapon or magazine, the law enforcement agency receiving the  
187 weapon or magazine shall issue a receipt for the weapon. In  
188 surrendering the weapon or magazine, the person releases any  
189 claim of ownership in or title to the weapon or magazine, agrees  
190 to the forfeiture of the weapon to the state, and agrees for the  
191 weapon or magazine to be destroyed as provided in paragraph  
192 (5)(e).

193       (e) This subsection does not grant immunity from  
194 prosecution for any offense other than unlawful possession of an  
195 assault weapon or magazine surrendered in the required manner.  
196 If, after notice has been given but before the weapon or

197 magazine is surrendered, the person uses or attempts to use the  
 198 weapon or magazine in committing a crime, the immunity from  
 199 prosecution for unlawful possession does not apply.

200 (8) NOTICE TO BE POSTED.--A licensed firearms dealer must  
 201 conspicuously post at each purchase counter a warning in block  
 202 letters of not less than 1 inch in height which provides  
 203 adequate notice of the time periods and criminal penalties  
 204 contained in this section.

205 Section 2. Subsection (3) of section 775.087, Florida  
 206 Statutes, is amended to read:

207 775.087 Possession or use of weapon; aggravated battery;  
 208 felony reclassification; minimum sentence.--

209 (3)(a)1. Any person who is convicted of a felony or an  
 210 attempt to commit a felony, regardless of whether the use of a  
 211 firearm is an element of the felony, and the conviction was for:

- 212 a. Murder;
- 213 b. Sexual battery;
- 214 c. Robbery;
- 215 d. Burglary;
- 216 e. Arson;
- 217 f. Aggravated assault;
- 218 g. Aggravated battery;
- 219 h. Kidnapping;
- 220 i. Escape;
- 221 j. Sale, manufacture, delivery, or intent to sell,
- 222 manufacture, or deliver any controlled substance;
- 223 k. Aircraft piracy;
- 224 l. Aggravated child abuse;



- 225 m. Aggravated abuse of an elderly person or disabled
- 226 adult;
- 227 n. Unlawful throwing, placing, or discharging of a
- 228 destructive device or bomb;
- 229 o. Carjacking;
- 230 p. Home-invasion robbery;
- 231 q. Aggravated stalking; or
- 232 r. Trafficking in cannabis, trafficking in cocaine,
- 233 capital importation of cocaine, trafficking in illegal drugs,
- 234 capital importation of illegal drugs, trafficking in
- 235 phencyclidine, capital importation of phencyclidine, trafficking
- 236 in methaqualone, capital importation of methaqualone,
- 237 trafficking in amphetamine, capital importation of amphetamine,
- 238 trafficking in flunitrazepam, trafficking in gamma-
- 239 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
- 240 trafficking in Phenethylamines, or other violation of s.
- 241 893.135(1);

242

243 and during the commission of the offense, the ~~such~~ person

244 possessed a semiautomatic firearm and its high-capacity

245 detachable box magazine or a machine gun as defined in s.

246 790.001, shall be sentenced to a minimum term of imprisonment of

247 20 ~~15~~ years.

248 2. Any person who is convicted of a felony or an attempt

249 to commit a felony listed in subparagraph (a)1., regardless of

250 whether the use of a weapon is an element of the felony, and

251 during the course of the commission of the felony the ~~such~~

252 person discharged a semiautomatic firearm and its high-capacity

253 box magazine or a "machine gun" as defined in s. 790.001 shall  
 254 be sentenced to a minimum term of imprisonment of 25 ~~20~~ years.

255 3. Any person who is convicted of a felony or an attempt  
 256 to commit a felony listed in subparagraph (a)1., regardless of  
 257 whether the use of a weapon is an element of the felony, and  
 258 during the course of the commission of the felony the ~~such~~  
 259 person discharged a semiautomatic firearm and its high-capacity  
 260 box magazine or a "machine gun" as defined in s. 790.001 and, as  
 261 the result of the discharge, death or great bodily harm was  
 262 inflicted upon any person, the convicted person shall be  
 263 sentenced to a minimum term of imprisonment of not less than 30  
 264 ~~25~~ years and not more than a term of imprisonment of life in  
 265 prison.

266 (b) Subparagraph (a)1., subparagraph (a)2., or  
 267 subparagraph (a)3. does not prevent a court from imposing a  
 268 longer sentence of incarceration as authorized by law in  
 269 addition to the minimum mandatory sentence, or from imposing a  
 270 sentence of death under ~~pursuant to~~ other applicable law.  
 271 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.  
 272 does not authorize a court to impose a lesser sentence than  
 273 otherwise required by law.

274  
 275 Notwithstanding s. 948.01, adjudication of guilt or imposition  
 276 of sentence may ~~shall~~ not be suspended, deferred, or withheld,  
 277 and the defendant is not eligible for statutory gain-time under  
 278 s. 944.275 or any form of discretionary early release, other  
 279 than pardon or executive clemency, or conditional medical  
 280 release under s. 947.149, prior to serving the minimum sentence.

281 (c) If the minimum mandatory terms of imprisonment imposed  
 282 under ~~pursuant to~~ this section exceed the maximum sentences  
 283 authorized by s. 775.082, s. 775.084, or the Criminal Punishment  
 284 Code under chapter 921, then the mandatory minimum sentence must  
 285 be imposed. If the mandatory minimum terms of imprisonment under  
 286 ~~pursuant to~~ this section are less than the sentences that could  
 287 be imposed as authorized by s. 775.082, s. 775.084, or the  
 288 Criminal Punishment Code under chapter 921, then the sentence  
 289 imposed by the court must include the mandatory minimum term of  
 290 imprisonment as required in this section.

291 (d) In addition to any other penalty provided by law, the  
 292 court may require any person whose felony conviction is  
 293 reclassified under subparagraph (a)1., subparagraph (a)2., or  
 294 subparagraph (a)3. to pay a fine of up to \$25,000.

295 (e)(d) It is the intent of the Legislature that offenders  
 296 who possess, carry, display, use, threaten to use, or attempt to  
 297 use a semiautomatic firearm and its high-capacity detachable box  
 298 magazine or a machine gun as defined in s. 790.001 be punished  
 299 to the fullest extent of the law, and the minimum terms of  
 300 imprisonment imposed under ~~pursuant to~~ this subsection shall be  
 301 imposed for each qualifying felony count for which the person is  
 302 convicted. The court shall impose any term of imprisonment  
 303 provided for in this subsection consecutively to any other term  
 304 of imprisonment imposed for any other felony offense.

305 (f)(e) As used in this subsection, the term:

306 1. "High-capacity detachable box magazine" means any  
 307 detachable box magazine, for use in a semiautomatic firearm,  
 308 which is capable of being loaded with more than 20 centerfire

309 cartridges.

310 2. "Semiautomatic firearm" means a firearm which is  
 311 capable of firing a series of rounds by separate successive  
 312 depressions of the trigger and which uses the energy of  
 313 discharge to perform a portion of the operating cycle.

314 Section 3. Section 790.07, Florida Statutes, is amended to  
 315 read:

316 790.07 Persons engaged in criminal offense, having  
 317 weapons.--

318 (1) Whoever, while committing or attempting to commit any  
 319 felony or while under indictment, displays, uses, threatens, or  
 320 attempts to use any weapon or electric weapon or device or  
 321 carries a concealed weapon commits ~~is guilty of~~ a felony of the  
 322 third degree, punishable as provided in s. 775.082, s. 775.083,  
 323 or s. 775.084.

324 (2) Whoever, while committing or attempting to commit any  
 325 felony, possesses, displays, uses, threatens, or attempts to use  
 326 any firearm or carries a concealed firearm commits ~~is guilty of~~  
 327 a felony of the second degree, punishable as provided in s.  
 328 775.082, s. 775.083, and s. 775.084.

329 (3) The following crimes are excluded from application of  
 330 this section: Antitrust violations, unfair trade practices,  
 331 restraints of trade, nonsupport of dependents, bigamy, or other  
 332 similar offenses.

333 (4) Whoever, having previously been convicted of a  
 334 violation of subsection (1) or subsection (2) and, subsequent to  
 335 such conviction, possesses, displays, uses, threatens, or  
 336 attempts to use any weapon, firearm, or electric weapon or

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337 | device, carries a concealed weapon, or carries a concealed  
338 | firearm while committing or attempting to commit any felony or  
339 | while under indictment commits ~~is guilty of~~ a felony of the  
340 | first degree, punishable as provided in s. 775.082, s. 775.083,  
341 | or s. 775.084. Sentence may ~~shall~~ not be suspended or deferred  
342 | under the provisions of this subsection.

343 |       Section 4. Except as otherwise provided herein, this act  
344 | shall take effect July 1, 2005.