

By Senator Margolis

35-275-05

1 A bill to be entitled

2 An act relating to weapons and firearms;

3 amending s. 775.087, F.S.; increasing the

4 minimum terms of imprisonment imposed for

5 possessing, discharging, or seriously harming

6 another with a semiautomatic firearm and its

7 high-capacity detachable box magazine or with a

8 machine gun; authorizing the court to impose an

9 additional fine against a person whose felony

10 conviction is reclassified under certain

11 specified circumstances because of the person's

12 possession of a semiautomatic firearm and its

13 high-capacity detachable box magazine or a

14 machine gun; amending s. 790.07, F.S.;

15 providing that it is a second-degree felony to

16 possess a firearm while committing or

17 attempting to commit a felony; providing an

18 effective date.

19

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

21

22 Section 1. Subsection (3) of section 775.087, Florida

23 Statutes, is amended to read:

24 775.087 Possession or use of weapon; aggravated

25 battery; felony reclassification; minimum sentence.--

26 (3)(a)1. Any person who is convicted of a felony or an

27 attempt to commit a felony, regardless of whether the use of a

28 firearm is an element of the felony, and the conviction was

29 for:

- 30 a. Murder;
- 31 b. Sexual battery;

- 1 c. Robbery;
- 2 d. Burglary;
- 3 e. Arson;
- 4 f. Aggravated assault;
- 5 g. Aggravated battery;
- 6 h. Kidnapping;
- 7 i. Escape;
- 8 j. Sale, manufacture, delivery, or intent to sell,
9 manufacture, or deliver any controlled substance;
- 10 k. Aircraft piracy;
- 11 l. Aggravated child abuse;
- 12 m. Aggravated abuse of an elderly person or disabled
13 adult;
- 14 n. Unlawful throwing, placing, or discharging of a
15 destructive device or bomb;
- 16 o. Carjacking;
- 17 p. Home-invasion robbery;
- 18 q. Aggravated stalking; or
- 19 r. Trafficking in cannabis, trafficking in cocaine,
20 capital importation of cocaine, trafficking in illegal drugs,
21 capital importation of illegal drugs, trafficking in
22 phencyclidine, capital importation of phencyclidine,
23 trafficking in methaqualone, capital importation of
24 methaqualone, trafficking in amphetamine, capital importation
25 of amphetamine, trafficking in flunitrazepam, trafficking in
26 gamma-hydroxybutyric acid (GHB), trafficking in
27 1,4-Butanediol, trafficking in Phenethylamines, or other
28 violation of s. 893.135(1);
- 29
- 30 and during the commission of the offense, the ~~such~~ person
31 possessed a semiautomatic firearm and its high-capacity

1 detachable box magazine or a machine gun as defined in s.
2 790.001, shall be sentenced to a minimum term of imprisonment
3 of 20 ~~15~~ years.

4 2. Any person who is convicted of a felony or an
5 attempt to commit a felony listed in subparagraph (a)1.,
6 regardless of whether the use of a weapon is an element of the
7 felony, and during the course of the commission of the felony
8 ~~the~~ such person discharged a semiautomatic firearm and its
9 high-capacity box magazine or a "machine gun" as defined in s.
10 790.001 shall be sentenced to a minimum term of imprisonment
11 of 25 ~~20~~ years.

12 3. Any person who is convicted of a felony or an
13 attempt to commit a felony listed in subparagraph (a)1.,
14 regardless of whether the use of a weapon is an element of the
15 felony, and during the course of the commission of the felony
16 ~~the~~ such person discharged a semiautomatic firearm and its
17 high-capacity box magazine or a "machine gun" as defined in s.
18 790.001 and, as the result of the discharge, death or great
19 bodily harm was inflicted upon any person, the convicted
20 person shall be sentenced to a minimum term of imprisonment of
21 not less than 30 ~~25~~ years and not more than a term of
22 imprisonment of life in prison.

23 (b) Subparagraph (a)1., subparagraph (a)2., or
24 subparagraph (a)3. does not prevent a court from imposing a
25 longer sentence of incarceration as authorized by law in
26 addition to the minimum mandatory sentence, or from imposing a
27 sentence of death under ~~pursuant to~~ other applicable law.
28 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.
29 does not authorize a court to impose a lesser sentence than
30 otherwise required by law.
31

1 Notwithstanding s. 948.01, adjudication of guilt or imposition
2 of sentence ~~may shall~~ not be suspended, deferred, or withheld,
3 and the defendant is not eligible for statutory gain-time
4 under s. 944.275 or any form of discretionary early release,
5 other than pardon or executive clemency, or conditional
6 medical release under s. 947.149, prior to serving the minimum
7 sentence.

8 (c) If the minimum mandatory terms of imprisonment
9 imposed ~~under pursuant to~~ this section exceed the maximum
10 sentences authorized by s. 775.082, s. 775.084, or the
11 Criminal Punishment Code under chapter 921, then the mandatory
12 minimum sentence must be imposed. If the mandatory minimum
13 terms of imprisonment ~~under pursuant to~~ this section are less
14 than the sentences that could be imposed as authorized by s.
15 775.082, s. 775.084, or the Criminal Punishment Code under
16 chapter 921, then the sentence imposed by the court must
17 include the mandatory minimum term of imprisonment as required
18 in this section.

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

23 ~~(e)(d)~~ It is the intent of the Legislature that
24 offenders who possess, carry, display, use, threaten to use,
25 or attempt to use a semiautomatic firearm and its
26 high-capacity detachable box magazine or a machine gun as
27 defined in s. 790.001 be punished to the fullest extent of the
28 law, and the minimum terms of imprisonment imposed under
29 ~~pursuant to~~ this subsection shall be imposed for each
30 qualifying felony count for which the person is convicted. The
31 court shall impose any term of imprisonment provided for in

1 | this subsection consecutively to any other term of
2 | imprisonment imposed for any other felony offense.

3 | ~~(f)~~~~(e)~~ As used in this subsection, the term:

4 | 1. "High-capacity detachable box magazine" means any
5 | detachable box magazine, for use in a semiautomatic firearm,
6 | which is capable of being loaded with more than 20 centerfire
7 | cartridges.

8 | 2. "Semiautomatic firearm" means a firearm which is
9 | capable of firing a series of rounds by separate successive
10 | depressions of the trigger and which uses the energy of
11 | discharge to perform a portion of the operating cycle.

12 | Section 2. Section 790.07, Florida Statutes, is
13 | amended to read:

14 | 790.07 Persons engaged in criminal offense, having
15 | weapons.--

16 | (1) Whoever, while committing or attempting to commit
17 | any felony or while under indictment, displays, uses,
18 | threatens, or attempts to use any weapon or electric weapon or
19 | device or carries a concealed weapon commits ~~is guilty of~~ a
20 | felony of the third degree, punishable as provided in s.
21 | 775.082, s. 775.083, or s. 775.084.

22 | (2) Whoever, while committing or attempting to commit
23 | any felony, possesses, displays, uses, threatens, or attempts
24 | to use any firearm or carries a concealed firearm commits ~~is~~
25 | ~~guilty of~~ a felony of the second degree, punishable as
26 | provided in s. 775.082, s. 775.083, and s. 775.084.

27 | (3) The following crimes are excluded from application
28 | of this section: Antitrust violations, unfair trade
29 | practices, restraints of trade, nonsupport of dependents,
30 | bigamy, or other similar offenses.

31 |

1 (4) Whoever, having previously been convicted of a
2 violation of subsection (1) or subsection (2) and, subsequent
3 to such conviction, possesses, displays, uses, threatens, or
4 attempts to use any weapon, firearm, or electric weapon or
5 device, carries a concealed weapon, or carries a concealed
6 firearm while committing or attempting to commit any felony or
7 while under indictment commits ~~is guilty of~~ a felony of the
8 first degree, punishable as provided in s. 775.082, s.
9 775.083, or s. 775.084. Sentence may ~~shall~~ not be suspended or
10 deferred under the provisions of this subsection.

11 Section 3. This act shall take effect July 1, 2005.

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14 SENATE SUMMARY

15 Provides for increased minimum terms of imprisonment
16 whenever a person possesses, discharges, or seriously
17 harms another with a semiautomatic firearm and its
18 high-capacity detachable box magazine or with a machine
19 gun. Provides that a person whose felony conviction is
20 reclassified under certain specified circumstances
21 because of the person's possession of a semiautomatic
22 firearm and its high-capacity detachable box magazine or
23 a machine gun may also, in addition to the
24 reclassification, be required to pay a fine of up to
25 \$25,000. Provides that if a person possesses a firearm
26 while committing or attempting to commit any felony, the
27 person commits a felony of the second degree.
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