

By Senator Margolis

35-265-05

1 A bill to be entitled

2 An act relating to weapons and firearms;

3 creating s. 790.222, F.S.; defining the terms

4 "assault weapon" and "large-capacity detachable

5 magazine"; prohibiting the manufacture,

6 importation, possession, purchase, sale, or

7 transfer of an assault weapon or large-capacity

8 detachable magazine; providing certain

9 specified exceptions; providing that a knowing

10 violation of the act is a felony of the second

11 degree; providing penalties; requiring the

12 seizure and forfeiture of assault weapons and

13 magazines held in violation of the act or used

14 in committing a crime; requiring that seized

15 weapons and magazines be destroyed within a

16 certain period; authorizing specified grace

17 periods during which a person may lawfully

18 transfer an assault weapon or magazine or take

19 certain other actions; granting immunity from

20 prosecution if a person notifies a law

21 enforcement agency that the person will

22 voluntarily surrender an assault weapon or

23 magazine; requiring licensed firearms dealers

24 to post a notice of the provisions of the act

25 and the criminal penalties imposed for a

26 violation of the act; providing an effective

27 date.

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29 WHEREAS, the United States Congress passed, and the

30 President of the United States signed into law, the Federal

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1 Assault Weapons Act on September 13, 1994, which prohibited
2 the use and possession of assault weapons, and

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

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

9 WHEREAS, a Miami-Dade police officer was shot with a
10 semiautomatic assault weapon the day before the federal
11 assault weapon ban expired, and

12 WHEREAS, according to the United States Bureau of
13 Justice Statistics, in 2003 nine states regulated assault
14 weapons, 38 states regulated machine guns, and 40 states
15 regulated short-barreled shotguns, and

16 WHEREAS, according to the United States Bureau of
17 Alcohol, Tobacco, and Firearms, assault weapons are preferred
18 by criminals rather than by law-abiding citizens eight to one,
19 NOW, THEREFORE,

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

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23 Section 1. Section 790.222, Florida Statutes, is
24 created to read:

25 790.222 Assault weapons and magazines; restrictions on
26 transfer and possession.--

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

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

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1 **(b) "Large-capacity detachable magazine" or "magazine"**
2 **means any ammunition-feeding device the function of which is**
3 **to deliver one or more ammunition cartridges into the firing**
4 **chamber, which can be removed from the firearm without the use**
5 **of any tool, and which has the capacity to hold more than 10**
6 **rounds of ammunition.**

7 **(2) PROHIBITION.--Notwithstanding any other law to the**
8 **contrary, effective January 1, 2006, a person may not**
9 **manufacture, import, possess, purchase, sell, or transfer any**
10 **assault weapon or large-capacity detachable magazine, except**
11 **as specifically authorized in subsection (3) or subsection**
12 **(6).**

13 **(3) EXCEPTIONS TO THE PROHIBITION.--Subsection (2)**
14 **does not apply to:**

15 **(a) A person who is employed by a federal, state,**
16 **county, or municipal law enforcement agency or a correctional**
17 **agency for use in the performance of the person's lawful**
18 **duties;**

19 **(b) A person who is a member of the armed forces of**
20 **the United States, the organized reserves, or the Florida**
21 **National Guard while on official military duty, in authorized**
22 **training for official military duty, or subject to recall or**
23 **mobilization and under order to possess an assault weapon or**
24 **magazine;**

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

29 **(d) A licensed firearms dealer who sells a lawfully**
30 **possessed assault weapon or magazine to a licensed firearms**
31 **dealer in another state.**

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

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

6 (a) An officer who makes an arrest for a violation of
7 subsection (2) or for any offense involving the use or
8 attempted use of an assault weapon or magazine shall take
9 possession of the assault weapon or magazine and retain it
10 until after disposition of the charge for which the person was
11 arrested.

12 (b) If the person arrested is convicted or found
13 guilty, regardless of adjudication, of a violation of
14 subsection (2) or an offense involving the use or attempted
15 use of an assault weapon or magazine, the seized assault
16 weapon or magazine is forfeited to the state, with or without
17 an order of forfeiture, and must be handled as provided in
18 paragraph (e).

19 (c) If the person arrested is acquitted of the charge
20 of violating subsection (2) or an offense involving the use or
21 attempted use of an assault weapon or magazine, the seized
22 assault weapon or magazine:

23 1. Must be returned to the person upon order of the
24 court if the person demonstrates lawful ownership or
25 possession of the assault weapon or magazine in accordance
26 with state and federal law.

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

3 (d) If an assault weapon or magazine is in or comes
4 into the possession of a law enforcement agency through
5 capture, confiscation, surrender, abandonment, or rejection,
6 or is left and not reclaimed, the assault weapon or magazine
7 is forfeited to the state on January 31, 2006, or within 30
8 days after it comes into the law enforcement agency's
9 possession, whichever occurs later, with or without an order
10 of forfeiture, and must be handled as provided in paragraph
11 (e).

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

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

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

21 1. Lawfully transfer the assault weapon or magazine to
22 a person outside this state or to an agency that may lawfully
23 possess an assault weapon or magazine;

24 2. Have the assault weapon or magazine modified to
25 render it permanently inoperable; or

26 3. Take other action to ensure that continued
27 possession of the assault weapon or magazine is not in
28 violation of state or federal law.

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

3 1. Lawfully transfer the assault weapon or magazine to
4 a person outside this state or to an agency that may lawfully
5 possess an assault weapon or magazine;

6 2. Have the assault weapon or magazine modified to
7 render it permanently inoperable; or

8 3. Take other action to ensure that continued
9 possession of the assault weapon or magazine is not in
10 violation of state or federal law.

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12 As used in this paragraph, the term "lawful possession of a
13 lawfully held assault weapon or magazine" includes an assault
14 weapon or magazine that is obtained through an estate, a gift,
15 a bequeathal, or an inheritance.

16 (7) IMMUNITY FROM PROSECUTION IF AN ASSAULT WEAPON IS
17 VOLUNTARILY SURRENDERED.--

18 (a) A person who voluntarily surrenders an unlawfully
19 possessed assault weapon or magazine in accordance with this
20 subsection to a local or state law enforcement agency after
21 giving the agency written notice of the intention to surrender
22 the weapon or magazine and the date and time of the intended
23 surrender is immune from prosecution for unlawful possession
24 of the weapon or magazine.

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

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

1 (d) Upon the request of the person surrendering an
2 assault weapon or magazine, the law enforcement agency
3 receiving the weapon or magazine shall issue a receipt for the
4 weapon. In surrendering the weapon or magazine, the person
5 releases any claim of ownership in or title to the weapon or
6 magazine, agrees to the forfeiture of the weapon to the state,
7 and agrees for the weapon or magazine to be destroyed as
8 provided in paragraph (5)(e).

9 (e) This subsection does not grant immunity from
10 prosecution for any offense other than unlawful possession of
11 an assault weapon or magazine surrendered in the required
12 manner. If, after notice has been given but before the weapon
13 or magazine is surrendered, the person uses or attempts to use
14 the weapon or magazine in committing a crime, the immunity
15 from prosecution for unlawful possession does not apply.

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

21 Section 2. This act shall take effect January 1, 2006.

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24 SENATE SUMMARY

25 Provides that it is a second-degree felony to
26 manufacture, import, possess, purchase, sell, or transfer
27 an assault weapon or large-capacity detachable magazine.
28 Provides certain specified exceptions. Provides for the
29 seizure and forfeiture of assault weapons and magazines.
30 Requires that seized weapons and magazines be destroyed
31 within a certain time period. Authorizes specified grace
 periods in which to transfer assault weapons and
 magazines. Grants immunity from prosecution whenever a
 person notifies a law enforcement agency that the person
 will voluntarily surrender the assault weapon or
 magazine. Requires licensed firearms dealers to post a
 notice of the act and the criminal penalties imposed.
 (See bill for details.)