

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: SB 718

INTRODUCER: Senator Siplin

SUBJECT: Sale of Imitation Firearms to Minors

DATE: March 23, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits the sale of an imitation firearm to minors and provides for exceptions. A violation of the prohibition against the sale of an imitation firearm to a minor is a third-degree felony.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Florida Law

A firearm is any weapon which expels a projectile by action of an explosive.¹ The definition of a firearm does not include an antique firearm, which is defined as any firearm manufactured in or before 1918, a replica of such firearm, or any firearm using fixed ammunition manufactured in or before 1918 and is no longer manufactured in the U.S. and is not readily available in the ordinary channels of commercial trade.²

Federal Law

Federal law prohibits manufacturing, entering into commerce, shipping, transporting, or receiving a toy, look-alike, or imitation firearm unless the firearm has an approved marking on

¹ Section 790.001(6), F.S.

² Section 790.001(1), F.S.

it.³ A look-alike firearm is defined as any imitation of any original firearm which was manufactured, designed, and produced since 1898, including toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles.⁴ Look-alike firearms do not include any look-alike, nonfiring, collector's replica of an antique firearm developed before 1898, or traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.⁵

Each toy, look-alike, or imitation firearm is required to have an orange plug inserted in the barrel which must be no more than 6 millimeters from the muzzle end of the barrel.⁶ Additionally, a device made entirely of transparent or translucent materials that permits unmistakable observation of the device's complete contents may be used.⁷ Approved markings also include the color of the entire exterior surface of the device in white, bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors. Or, the entire color of the exterior surface of the device is predominantly white in combination with bright red, bright orange, bright yellow, bright green, or bright blue.⁸

Federal law provides for a waiver for any toy, look-alike, or imitation firearm that will be used only in the theatrical, movie, or television industries.⁹

After Market Coating for Firearms

One of the after market industries in the firearm area are after market coatings of firearms. A firearm owner may have his or her firearm coated in a number of colors which includes some of the colors that the federal government have declared toy guns to be colored.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of the Florida Statutes to prohibit the sale, by mail or in any other manner, of an imitation firearm to minors. An "imitation firearm" is defined as "a toy gun, replica of a firearm, traditional BB gun, paintball gun, pellet-firing air gun, air-soft gun that fires nonmetallic projectiles, or other device that is so substantially similar in coloration and overall appearance to a firearm...as to lead a reasonable person to perceive that the device is a firearm."

This section provides exceptions for:

- Nonfiring collector's replica of an antiques firearm developed prior to 1898; and
- A device for which a blaze orange solid plug or marking is permanently affixed to the muzzle end of the barrel for a depth of at least 6 millimeters; a device for which the entire exterior surface is colored white, bright red, bright orange,

³ 15 U.S.C. s. 5001(a).

⁴ 15 U.S.C. s. 5001(c).

⁵ *Id.*

⁶ 15 U.S.C. s. 5001(b).

⁷ 15 CFR s. 1150.3.

⁸ *Id.*

⁹ 15 CFR s. 1150.4

bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern; or a device that is constructed of transparent or translucent materials that permit unmistakable observation of the complete contents of the device.

A violation of this section is a third degree felony.

Section 2 provides for an effective date of October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Federal Preemption

The Supremacy Clause of the U.S. Constitution provides Congress the authority to preempt law and policies of state and local governments.¹⁰ Conflicting provisions of a state constitution, a state law or local ordinance are “null and void.”¹¹

The federal law governing the sale of imitation firearms contains an explicit preemption clause, 15 USC Sec. 5001(g) which states that the provisions of the law will “supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall—

- (i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or
- (ii) prohibit the sale (other than prohibiting the sale to minors) of traditional B-B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.”

This provision appears to permit, rather than preempt, the type of restrictions, as they relate to minors, proposed in SB 718.

¹⁰ Art. VI, U.S. Const.

¹¹ Corwin & Peltason’s Understanding the Constitution, 15th Edition, J. W. Peltason & Sue Davis (Harcourt College Publishers, NY, 2000), p. 205.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill prohibits the sale of imitation firearms to minors, and therefore, may have an indeterminate negative fiscal impact on the sellers of such imitation firearms.

C. Government Sector Impact:

This bill creates new criminal offenses, which could result in felony convictions, with potential costs for prosecution and punishment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
