

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 782

INTRODUCER: Criminal Justice Committee and Senator Margolis

SUBJECT: Weapons and Firearms

DATE: March 18, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill increases the minimum mandatory penalties that currently exist under s. 775.087, F.S., for possessing, discharging, or discharging and harming or killing another with a semiautomatic firearm or machine gun.

The bill creates a new second degree felony when a person uses the identity of a victim of identity theft during the firearm purchase process regulated by s. 790.065, F.S.

The bill also includes a first degree felony offense under s. 790.07, F.S., for using, threatening to use, carrying concealed, displaying, or attempting to use a semiautomatic firearm or machine gun during the course of committing a felony.

This bill substantially amends the following sections of the Florida Statutes: 775.087, 790.065, 790.07, and 921.022.

II. Present Situation:

Section 775.087(3), F.S., sets forth minimum mandatory sentences where a person is convicted of certain felony offenses, regardless of whether the use of a firearm is an element of the felony, if, during the course of committing the felony the person possessed, discharged, or discharged and harmed another with a semiautomatic firearm or machine gun.

The intent of the Legislature is set forth in s. 775.087(3)(d), F.S., as follows:

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

Current law requires a court to impose a minimum prison sentence for the listed felony offenses. If the defendant possessed a semiautomatic firearm or machine gun during the course of committing the felony, the minimum sentence is 15 years imprisonment. If they discharged it, the sentence is a minimum of 20 years. If, in the course of committing one of the listed felonies, the person discharged and killed or caused great bodily harm upon any person, the sentence is 25 years to life imprisonment.

Section 790.065, F.S., governs the sale and delivery of firearms. Subsection (12) of that section currently provides that a buyer who uses false identification during the purchase process commits a third degree felony.

Section 790.07, F.S., prohibits the display, use, threat of using, attempt to use, or carrying of a concealed weapon or firearm while committing a felony offense. If the defendant has or uses a weapon, it is a third degree felony. If the weapon is a firearm, the offense is a second degree felony.

III. Effect of Proposed Changes:

The bill increases the minimum mandatory penalties for possessing, discharging, and discharging and injuring or killing another with a semiautomatic firearm or machine gun in the course of committing the felony offenses enumerated in s. 775.087(3)(a)(1)a.-r., F.S.

The penalty for possessing a semiautomatic firearm or machine gun during the commission of one of the offenses would increase to 20 years from 15 years imprisonment. For discharging the semiautomatic firearm or machine gun, the minimum sentence would become 25 years, rather than 20. If the defendant discharges the semiautomatic firearm or machine gun and kills or seriously injures another, the penalty would become life imprisonment without the possibility of parole.

The bill creates a second degree felony offense where a person uses false identification during the process of purchasing a firearm, if the false identity is the identity of a victim of identity theft. The fine provided is up to \$25,000, which is higher than the normal \$10,000 fine imposed under s. 775.083, F.S.

The bill amends s. 790.07, F.S., by creating a new subsection to prohibit the display, use, threat of using, attempting to use, or carrying a concealed semiautomatic firearm or machine gun while

committing a felony offense. The offense is a first degree felony, punishable by up to 30 years imprisonment.

The Offense Severity Ranking Chart from the Criminal Punishment Code is amended simply to include a new statutory cross-reference. There are no substantive changes to the Ranking Chart.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that the potential prison bed impact of this bill is unquantifiable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 18, 2008:

The Committee Substitute deleted the references to simple possession of a semiautomatic firearm or machine gun the bill had created in s. 790.07, F.S.

- B. **Amendments:**

None.