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LEGISLATIVE ACTION

Senate

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House

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Floor: NC/2R

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03/03/2018 06:08 PM

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Senator Farmer moved the following:

Senate Amendment (with title amendment)

Delete line 2114

and insert:

Section 46. Effective January 1, 2019, section 790.30,
Florida Statutes, is created to read:

790.30 Large-capacity magazines.-

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

(a) "Large-capacity magazine" means any ammunition feeding
device with the capacity to accept more than 10 rounds, or any
conversion kit, part, or combination of parts from which such a



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12 device can be assembled if those parts are in the possession or
13 under the control of the same person, but does not include any
14 of the following:

15 1. A feeding device that has been permanently altered so
16 that it cannot accommodate more than 7 rounds;

17 2. A .22 caliber tube ammunition feeding device; or

18 3. A tubular magazine that is contained in a lever-action
19 firearm.

20 (b) "Licensed gun dealer" means a person who has a federal
21 firearms license.

22 (2) SALE OR TRANSFER.—

23 (a) A person may not import into the state or, within this
24 state, distribute, transport, sell, keep for sale, offer or
25 expose for sale, or give a large-capacity magazine. Except as
26 provided in paragraph (b), any person who violates this
27 paragraph commits a felony of the third degree, punishable as
28 provided in s. 775.082, s. 775.083, or s. 775.084, with a
29 mandatory minimum term of imprisonment of 2 years.

30 (b) A person may not transfer, sell, or give a large-
31 capacity magazine to a person under 18 years of age. Any person
32 who violates this paragraph commits a felony of the second
33 degree, punishable as provided in s. 775.082, s. 775.083, or s.
34 775.084, with a mandatory minimum term of imprisonment of 6
35 years.

36 (c) Paragraph (a) does not apply to:

37 1. The sale of large-capacity magazines to the Department
38 of Law Enforcement, to a law enforcement agency as defined in s.
39 934.02, to the Department of Corrections, or to the military,
40 air, or naval forces of this state or the United States for use



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41 in the discharge of their official duties.

42 2. A person who is the executor or administrator of an
43 estate that includes a large-capacity magazine for which a
44 certificate of possession has been issued under subsection (4)
45 which is disposed of as authorized by the probate court, if the
46 disposition is otherwise authorized under this section.

47 3. The transfer by bequest or intestate succession of a
48 large-capacity magazine for which a certificate of possession
49 has been issued under subsection (4).

50 (3) POSSESSION.—

51 (a) Except as provided in subsection (5) or otherwise
52 provided in this section or authorized by any other law, a
53 person may not, within this state, possess a large-capacity
54 magazine. Any person who violates this paragraph commits a
55 felony of the third degree, punishable as provided in s.
56 775.082, s. 775.083, or s. 775.084, with a mandatory minimum
57 term of imprisonment of 1 year.

58 (b) Paragraph (a) does not apply to the possession of a
59 large-capacity magazine by a member or employee of the
60 Department of Law Enforcement, a law enforcement agency as
61 defined in s. 934.02, the Department of Corrections, or the
62 military, air, or naval forces of this state or of the United
63 States for use in the discharge of his or her official duties;
64 nor does this section prohibit the possession or use of a large-
65 capacity magazine by a sworn member of one of these agencies
66 when on duty and the use is within the scope of his or her
67 duties.

68 (c) Paragraph (a) does not apply to the possession of a
69 large-capacity magazine by any person before July 1, 2019, if



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70 all of the following are applicable:

71 1. The person is eligible to apply for a certificate of
72 possession for the large-capacity magazine by July 1, 2019;

73 2. The person lawfully possessed the large-capacity
74 magazine before October 1, 2018; and

75 3. The person is otherwise in compliance with this section
76 and the applicable requirements of this chapter for possession
77 of a firearm.

78 (d) Paragraph (a) does not apply to a person who is the
79 executor or administrator of an estate that includes a large-
80 capacity magazine for which a certificate of possession has been
81 issued under subsection (4), if the large-capacity magazine is
82 possessed at a place set forth in subparagraph (4)(c)1. or as
83 authorized by the probate court.

84 (4) CERTIFICATE OF POSSESSION.—

85 (a) Any person who lawfully possesses a large-capacity
86 magazine before October 1, 2018, shall apply by October 1, 2019,
87 or, if such person is a member of the military or naval forces
88 of this state or of the United States and cannot apply by
89 October 1, 2019, because he or she is or was on official duty
90 outside this state, shall apply within 90 days after returning
91 to the state, to the Department of Law Enforcement for a
92 certificate of possession with respect to such large-capacity
93 magazine. The certificate must contain a description of the
94 large-capacity magazine which identifies the large-capacity
95 magazine uniquely, including all identification marks; the full
96 name, address, date of birth, and thumbprint of the owner; and
97 any other information as the department may deem appropriate.
98 The department shall adopt rules no later than January 1, 2019,



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99 to establish procedures with respect to the application for, and
100 issuance of, certificates of possession under this section.

101 (b)1. A large-capacity magazine lawfully possessed in
102 accordance with this section may not be sold or transferred on
103 or after January 1, 2019, to any person within this state other
104 than to a licensed gun dealer, as provided in subsection (5), or
105 by a bequest or intestate succession.

106 2. A person who obtains title to a large-capacity magazine
107 for which a certificate of possession has been issued under this
108 subsection shall, within 90 days after obtaining title, apply to
109 the Department of Law Enforcement for a certificate of
110 possession, render the large-capacity magazine permanently
111 inoperable, sell the large-capacity magazine to a licensed gun
112 dealer, or remove the large-capacity magazine from the state.

113 3. A person who moves into the state and who is in lawful
114 possession of a large-capacity magazine, shall, within 90 days,
115 either render the large-capacity magazine permanently
116 inoperable, sell the large-capacity magazine to a licensed gun
117 dealer, or remove the large-capacity magazine from this state,
118 unless the person is a member of the military, air, or naval
119 forces of this state or of the United States, is in lawful
120 possession of a large-capacity magazine, and has been
121 transferred into the state after October 1, 2019.

122 (c) A person who has been issued a certificate of
123 possession for a large-capacity magazine under this subsection
124 may possess it only if the person is:

125 1. At the residence, the place of business, or any other
126 property owned by that person, or on a property owned by another
127 person with the owner's express permission;



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128 2. On the premises of a target range of a public or private
129 club or organization organized for the purpose of practicing
130 shooting at targets;

131 3. On a target range that holds a regulatory or business
132 license for the purpose of practicing shooting at that target
133 range;

134 4. On the premises of a licensed shooting club;

135 5. Attending an exhibition, display, or educational project
136 on firearms which is sponsored by, conducted under the auspices
137 of, or approved by a law enforcement agency or a nationally or
138 state-recognized entity that fosters proficiency in, or promotes
139 education about, firearms; or

140 6. Transporting the large-capacity magazine between any of
141 the places mentioned in this paragraph, or from or to any
142 licensed gun dealer for servicing or repair pursuant to
143 paragraph (7) (b), provided the large-capacity magazine is
144 transported as required by subsection (7).

145 (5) CERTIFICATE OF TRANSFER.—If an owner of a large-
146 capacity magazine sells or transfers the magazine to a licensed
147 gun dealer, he or she shall, at the time of delivery of the
148 magazine, execute a certificate of transfer and cause the
149 certificate to be mailed or delivered to the Department of Law
150 Enforcement. The certificate must contain:

151 (a) The date of sale or transfer.

152 (b) The name and address of the seller or transferor and
153 the licensed gun dealer and their social security numbers or
154 driver license numbers.

155 (c) The licensed gun dealer's federal firearms license
156 number.



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157 (d) Any other information the Department of Law Enforcement
158 prescribes.

159
160 The licensed gun dealer shall present his or her driver license
161 or social security card and federal firearms license to the
162 seller or transferor for inspection at the time of purchase or
163 transfer. The Department of Law Enforcement shall maintain a
164 file of all certificates of transfer at its headquarters.

165 (6) RELINQUISHMENT.—An individual may arrange in advance to
166 relinquish a large-capacity magazine to a law enforcement agency
167 as defined in s. 934.02 or the Department of Law Enforcement.
168 The large-capacity magazine shall be transported in accordance
169 with subsection (7).

170 (7) TRANSPORTATION.—

171 (a) A licensed gun dealer who lawfully purchases for resale
172 a large-capacity magazine under this section may transport the
173 large-capacity magazine between licensed gun dealers or out of
174 this state, but a person may not carry a large-capacity magazine
175 concealed from public view, unless such large-capacity magazine
176 is kept in the trunk of such vehicle or in a case or other
177 container that is inaccessible to the operator of or any
178 passenger in such vehicle. Any person who violates this
179 paragraph commits a misdemeanor of the second degree, punishable
180 as provided in s. 775.082 or s. 775.083. Any licensed gun dealer
181 may display the large-capacity magazine at any gun show or sell
182 it to a resident outside this state.

183 (b) Any licensed gun dealer may transfer possession of any
184 large-capacity magazine received pursuant to paragraph (a) to a
185 gunsmith for purposes of accomplishing service or repair of the



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186 same. Transfers are permissible only to a gunsmith who is:

187 1. In the licensed gun dealer's employ; or

188 2. Contracted by the licensed gun dealer for gunsmithing
189 services, provided the gunsmith holds a dealer's license issued
190 pursuant to chapter 44 of Title 18 the United States Code, 18
191 U.S.C. ss. 921 et seq., and the regulations issued pursuant
192 thereto.

193 (8) CIRCUMSTANCES IN WHICH MANUFACTURE OR TRANSPORTATION
194 NOT PROHIBITED.—This section does not prohibit any person, firm,
195 or corporation engaged in the business of manufacturing large-
196 capacity magazines in this state from manufacturing or
197 transporting large-capacity magazines in this state for sale
198 within this state in accordance with subparagraph (2) (c)1. or
199 for sale outside this state.

200 (9) EXCEPTION.—This section does not apply to any magazine
201 modified to render it permanently inoperable.

202 Section 47. Effective January 1, 2019, paragraph (a) of
203 subsection (3) of section 775.087, Florida Statutes, is amended
204 to read:

205 775.087 Possession or use of weapon; aggravated battery;
206 felony reclassification; minimum sentence.—

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

- 210 a. Murder;
- 211 b. Sexual battery;
- 212 c. Robbery;
- 213 d. Burglary;
- 214 e. Arson;



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215 f. Aggravated battery;
216 g. Kidnapping;
217 h. Escape;
218 i. Sale, manufacture, delivery, or intent to sell,
219 manufacture, or deliver any controlled substance;
220 j. Aircraft piracy;
221 k. Aggravated child abuse;
222 l. Aggravated abuse of an elderly person or disabled adult;
223 m. Unlawful throwing, placing, or discharging of a
224 destructive device or bomb;
225 n. Carjacking;
226 o. Home-invasion robbery;
227 p. Aggravated stalking; or
228 q. Trafficking in cannabis, trafficking in cocaine, capital
229 importation of cocaine, trafficking in illegal drugs, capital
230 importation of illegal drugs, trafficking in phencyclidine,
231 capital importation of phencyclidine, trafficking in
232 methaqualone, capital importation of methaqualone, trafficking
233 in amphetamine, capital importation of amphetamine, trafficking
234 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
235 (GHB), trafficking in 1,4-Butanediol, trafficking in
236 Phenethylamines, or other violation of s. 893.135(1);
237
238 and during the commission of the offense, such person possessed
239 a semiautomatic firearm and its high-capacity detachable box
240 magazine, or a large-capacity magazine as defined in s. 790.30,
241 or a machine gun as defined in s. 790.001, shall be sentenced to
242 a minimum term of imprisonment of 15 years.
243 2. Any person who is convicted of a felony or an attempt to



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244 commit a felony listed in subparagraph (a)1., regardless of
245 whether the use of a weapon is an element of the felony, and
246 during the course of the commission of the felony such person
247 discharged a semiautomatic firearm and its high-capacity box
248 magazine, or a large-capacity magazine as defined in s. 790.30,
249 or a "machine gun" as defined in s. 790.001 shall be sentenced
250 to a minimum term of imprisonment of 20 years.

251 3. Any person who is convicted of a felony or an attempt to
252 commit a felony listed in subparagraph (a)1., regardless of
253 whether the use of a weapon is an element of the felony, and
254 during the course of the commission of the felony such person
255 discharged a semiautomatic firearm and its high-capacity box
256 magazine, or a large-capacity magazine as defined in s. 790.30,
257 or a "machine gun" as defined in s. 790.001 and, as the result
258 of the discharge, death or great bodily harm was inflicted upon
259 any person, the convicted person shall be sentenced to a minimum
260 term of imprisonment of not less than 25 years and not more than
261 a term of imprisonment of life in prison.

262 Section 48. For the purpose of incorporating the amendment
263 made by this act to section 775.087, Florida Statutes, in a
264 reference thereto, section 27.366, Florida Statutes, is
265 reenacted to read:

266 27.366 Legislative intent and policy in cases meeting
267 criteria of s. 775.087(2) and (3).—It is the intent of the
268 Legislature that convicted criminal offenders who meet the
269 criteria in s. 775.087(2) and (3) be sentenced to the minimum
270 mandatory prison terms provided therein. It is the intent of the
271 Legislature to establish zero tolerance of criminals who use,
272 threaten to use, or avail themselves of firearms in order to



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273 commit crimes and thereby demonstrate their lack of value for
274 human life. It is also the intent of the Legislature that
275 prosecutors should appropriately exercise their discretion in
276 those cases in which the offenders' possession of the firearm is
277 incidental to the commission of a crime and not used in
278 furtherance of the crime, used in order to commit the crime, or
279 used in preparation to commit the crime. For every case in which
280 the offender meets the criteria in this act and does not receive
281 the mandatory minimum prison sentence, the state attorney must
282 explain the sentencing deviation in writing and place such
283 explanation in the case file maintained by the state attorney.

284 Section 49. For the purpose of incorporating the amendment
285 made by this act to section 775.087, Florida Statutes, in a
286 reference thereto, paragraph (b) of subsection (1) of section
287 921.0024, Florida Statutes, is reenacted to read:

288 921.0024 Criminal Punishment Code; worksheet computations;
289 scoresheets.-

290 (1)

291 (b) WORKSHEET KEY:

292
293 Legal status points are assessed when any form of legal status
294 existed at the time the offender committed an offense before the
295 court for sentencing. Four (4) sentence points are assessed for
296 an offender's legal status.

297
298 Community sanction violation points are assessed when a
299 community sanction violation is before the court for sentencing.
300 Six (6) sentence points are assessed for each community sanction
301 violation and each successive community sanction violation,



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302 unless any of the following apply:

303 1. If the community sanction violation includes a new
304 felony conviction before the sentencing court, twelve (12)
305 community sanction violation points are assessed for the
306 violation, and for each successive community sanction violation
307 involving a new felony conviction.

308 2. If the community sanction violation is committed by a
309 violent felony offender of special concern as defined in s.
310 948.06:

311 a. Twelve (12) community sanction violation points are
312 assessed for the violation and for each successive violation of
313 felony probation or community control where:

314 I. The violation does not include a new felony conviction;
315 and

316 II. The community sanction violation is not based solely on
317 the probationer or offender's failure to pay costs or fines or
318 make restitution payments.

319 b. Twenty-four (24) community sanction violation points are
320 assessed for the violation and for each successive violation of
321 felony probation or community control where the violation
322 includes a new felony conviction.

323

324 Multiple counts of community sanction violations before the
325 sentencing court shall not be a basis for multiplying the
326 assessment of community sanction violation points.

327

328 Prior serious felony points: If the offender has a primary
329 offense or any additional offense ranked in level 8, level 9, or
330 level 10, and one or more prior serious felonies, a single



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331 assessment of thirty (30) points shall be added. For purposes of
332 this section, a prior serious felony is an offense in the
333 offender's prior record that is ranked in level 8, level 9, or
334 level 10 under s. 921.0022 or s. 921.0023 and for which the
335 offender is serving a sentence of confinement, supervision, or
336 other sanction or for which the offender's date of release from
337 confinement, supervision, or other sanction, whichever is later,
338 is within 3 years before the date the primary offense or any
339 additional offense was committed.

340

341 Prior capital felony points: If the offender has one or more
342 prior capital felonies in the offender's criminal record, points
343 shall be added to the subtotal sentence points of the offender
344 equal to twice the number of points the offender receives for
345 the primary offense and any additional offense. A prior capital
346 felony in the offender's criminal record is a previous capital
347 felony offense for which the offender has entered a plea of nolo
348 contendere or guilty or has been found guilty; or a felony in
349 another jurisdiction which is a capital felony in that
350 jurisdiction, or would be a capital felony if the offense were
351 committed in this state.

352

353 Possession of a firearm, semiautomatic firearm, or machine gun:
354 If the offender is convicted of committing or attempting to
355 commit any felony other than those enumerated in s. 775.087(2)
356 while having in his or her possession: a firearm as defined in
357 s. 790.001(6), an additional eighteen (18) sentence points are
358 assessed; or if the offender is convicted of committing or
359 attempting to commit any felony other than those enumerated in



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360 s. 775.087(3) while having in his or her possession a
361 semiautomatic firearm as defined in s. 775.087(3) or a machine
362 gun as defined in s. 790.001(9), an additional twenty-five (25)
363 sentence points are assessed.

364

365 Sentencing multipliers:

366

367 Drug trafficking: If the primary offense is drug trafficking
368 under s. 893.135, the subtotal sentence points are multiplied,
369 at the discretion of the court, for a level 7 or level 8
370 offense, by 1.5. The state attorney may move the sentencing
371 court to reduce or suspend the sentence of a person convicted of
372 a level 7 or level 8 offense, if the offender provides
373 substantial assistance as described in s. 893.135(4).

374

375 Law enforcement protection: If the primary offense is a
376 violation of the Law Enforcement Protection Act under s.
377 775.0823(2), (3), or (4), the subtotal sentence points are
378 multiplied by 2.5. If the primary offense is a violation of s.
379 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
380 are multiplied by 2.0. If the primary offense is a violation of
381 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
382 Protection Act under s. 775.0823(10) or (11), the subtotal
383 sentence points are multiplied by 1.5.

384

385 Grand theft of a motor vehicle: If the primary offense is grand
386 theft of the third degree involving a motor vehicle and in the
387 offender's prior record, there are three or more grand thefts of
388 the third degree involving a motor vehicle, the subtotal



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389 sentence points are multiplied by 1.5.

390

391 Offense related to a criminal gang: If the offender is convicted
392 of the primary offense and committed that offense for the
393 purpose of benefiting, promoting, or furthering the interests of
394 a criminal gang as defined in s. 874.03, the subtotal sentence
395 points are multiplied by 1.5. If applying the multiplier results
396 in the lowest permissible sentence exceeding the statutory
397 maximum sentence for the primary offense under chapter 775, the
398 court may not apply the multiplier and must sentence the
399 defendant to the statutory maximum sentence.

400

401 Domestic violence in the presence of a child: If the offender is
402 convicted of the primary offense and the primary offense is a
403 crime of domestic violence, as defined in s. 741.28, which was
404 committed in the presence of a child under 16 years of age who
405 is a family or household member as defined in s. 741.28(3) with
406 the victim or perpetrator, the subtotal sentence points are
407 multiplied by 1.5.

408

409 Adult-on-minor sex offense: If the offender was 18 years of age
410 or older and the victim was younger than 18 years of age at the
411 time the offender committed the primary offense, and if the
412 primary offense was an offense committed on or after October 1,
413 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
414 violation involved a victim who was a minor and, in the course
415 of committing that violation, the defendant committed a sexual
416 battery under chapter 794 or a lewd act under s. 800.04 or s.
417 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.



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418 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
419 800.04; or s. 847.0135(5), the subtotal sentence points are
420 multiplied by 2.0. If applying the multiplier results in the
421 lowest permissible sentence exceeding the statutory maximum
422 sentence for the primary offense under chapter 775, the court
423 may not apply the multiplier and must sentence the defendant to
424 the statutory maximum sentence.

425 Section 50. For the purpose of incorporating the amendment
426 made by this act to section 775.087, Florida Statutes, in a
427 reference thereto, paragraph (b) of subsection (3) of section
428 947.146, Florida Statutes, is reenacted to read:

429 947.146 Control Release Authority.—

430 (3) Within 120 days prior to the date the state
431 correctional system is projected pursuant to s. 216.136 to
432 exceed 99 percent of total capacity, the authority shall
433 determine eligibility for and establish a control release date
434 for an appropriate number of parole ineligible inmates committed
435 to the department and incarcerated within the state who have
436 been determined by the authority to be eligible for
437 discretionary early release pursuant to this section. In
438 establishing control release dates, it is the intent of the
439 Legislature that the authority prioritize consideration of
440 eligible inmates closest to their tentative release date. The
441 authority shall rely upon commitment data on the offender
442 information system maintained by the department to initially
443 identify inmates who are to be reviewed for control release
444 consideration. The authority may use a method of objective risk
445 assessment in determining if an eligible inmate should be
446 released. Such assessment shall be a part of the department's



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447 management information system. However, the authority shall have
448 sole responsibility for determining control release eligibility,
449 establishing a control release date, and effectuating the
450 release of a sufficient number of inmates to maintain the inmate
451 population between 99 percent and 100 percent of total capacity.
452 Inmates who are ineligible for control release are inmates who
453 are parole eligible or inmates who:

454 (b) Are serving the mandatory minimum portion of a sentence
455 enhanced under s. 775.087(2) or (3), or s. 784.07(3);
456

457 In making control release eligibility determinations under this
458 subsection, the authority may rely on any document leading to or
459 generated during the course of the criminal proceedings,
460 including, but not limited to, any presentence or postsentence
461 investigation or any information contained in arrest reports
462 relating to circumstances of the offense.

463 Section 51. Except as otherwise expressly provided in this
464 act, this act shall take effect upon becoming a law.
465

466 ===== T I T L E A M E N D M E N T =====

467 And the title is amended as follows:

468 Delete line 244

469 and insert:

470 providing appropriations; creating s. 790.30, F.S.;
471 defining terms; prohibiting the sale or transfer of a
472 large-capacity magazine; providing criminal penalties;
473 providing exceptions to the prohibition; prohibiting
474 possession of a large-capacity magazine; providing
475 criminal penalties; providing exceptions to the



476 prohibition; requiring a person who lawfully possessed
477 such a magazine before a specified date to obtain a
478 certificate of possession; providing requirements for
479 the certificate; requiring the Department of Law
480 Enforcement to adopt rules by a certain date; limiting
481 transfers of large-capacity magazines represented by
482 such certificates as of a specified date; providing
483 conditions for continued possession of such magazines;
484 requiring certificates of transfer for the sale or
485 transfer of such magazines; requiring that the
486 department maintain records of such sales or
487 transfers; providing for relinquishment of large-
488 capacity magazines to law enforcement agencies or the
489 department; providing requirements for transportation
490 of large-capacity magazines; providing criminal
491 penalties for violations; specifying circumstances in
492 which the manufacture or transportation of large-
493 capacity magazines is not prohibited; exempting
494 permanently inoperable magazines from all such
495 provisions; amending s. 775.087, F.S.; providing
496 enhanced criminal penalties for certain offenses
497 committed by persons with a large-capacity magazine;
498 reenacting ss. 27.366, 921.0024(1)(b), and
499 947.146(3)(b), F.S., relating to legislative intent
500 and policy in certain cases, the Criminal Punishment
501 Code worksheet key, and the Control Release Authority,
502 respectively, to incorporate the amendment made to s.
503 775.087, F.S., in references thereto; providing
504 effective dates.