

Committee Substitute for House Bill No. 955

An act relating to weapons and firearms; amending s. 790.065, F.S., relating to the sale and delivery of weapons and firearms; extending the date of repeal of such section; creating s. 790.166, F.S.; prohibiting the unlawful manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction; prohibiting unlawful conspiring to use such weapon; prohibiting making such weapon readily accessible to others; providing a first degree felony penalty for violation; providing that violation which results in death is a capital felony; prohibiting the unlawful manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a hoax weapon of mass destruction; prohibiting unlawful conspiring to use such weapon; prohibiting making such weapon readily accessible to others; providing a second degree felony penalty for violation; providing definitions for purposes of the act; providing nonapplicability of the act; amending s. 921.0022, F.S., relating to the Criminal Punishment Code; providing for ranking the offense of possessing, selling, or using a weapon of mass destruction and the offense of possessing, selling, or using a hoax weapon of mass destruction; providing effective dates.

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

Section 1. Section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(1) A licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

(a) Obtained a completed form from the potential buyer or transferee, which form shall have been promulgated by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

(b) Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction. The Department of Law Enforcement may reduce, or suspend collection of, the fee to reflect payment received from the Federal Government applied to the cost of maintaining the criminal history check system established by this section as a means of facilitating or supplementing the National Instant Criminal Background Check System. The Department of Law Enforcement shall, by rule, establish procedures for the fees to be transmitted by the

licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation of the criminal history checks required by this section. The Department of Law Enforcement, each year prior to February 1, shall make a full accounting of all receipts and expenditures of such funds to the President of the Senate, the Speaker of the House of Representatives, the majority and minority leaders of each house of the Legislature, and the chairs of the appropriations committees of each house of the Legislature. In the event that the cumulative amount of funds collected exceeds the cumulative amount of expenditures by more than \$2.5 million, excess funds may be used for the purpose of purchasing soft body armor for law enforcement officers.

(c) Requested, by means of a toll-free telephone call, the Department of Law Enforcement to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems as of the date of the request.

(d) Received a unique approval number for that inquiry from the Department of Law Enforcement, and recorded the date and such number on the consent form.

However, if the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license pursuant to the provisions of s. 790.06 or holds an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), the provisions of this subsection do not apply.

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review criminal history records to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm; or

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred.

(b) Inform the licensee making the inquiry either that records demonstrate that the buyer or transferee is so prohibited and provide the licensee

a nonapproval number, or provide the licensee with a unique approval number.

(c)1. Review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a dangerous crime as specified in s. 907.041(4)(a) or for any of the following enumerated offenses:

- a. Criminal anarchy under ss. 876.01 and 876.02.
- b. Extortion under s. 836.05.
- c. Explosives violations under s. 552.22(1) and (2).
- d. Controlled substances violations under chapter 893.
- e. Resisting an officer with violence under s. 843.01.
- f. Weapons and firearms violations under this chapter.
- g. Treason under s. 876.32.
- h. Assisting self-murder under s. 782.08.
- i. Sabotage under s. 876.38.
- j. Stalking or aggravated stalking under s. 784.048.

If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a conditional nonapproval number.

2. Within 24 working hours, the department shall determine the disposition of the indictment, information, or arrest and inform the licensee as to whether the potential buyer is prohibited from receiving or possessing a firearm. For purposes of this paragraph, "working hours" means the hours from 8 a.m. to 5 p.m. Monday through Friday, excluding legal holidays.

3. The office of the clerk of court, at no charge to the department, shall respond to any department request for data on the disposition of the indictment, information, or arrest as soon as possible, but in no event later than 8 working hours.

4. The department shall determine as quickly as possible within the allotted time period whether the potential buyer is prohibited from receiving or possessing a firearm.

5. If the potential buyer is not so prohibited, or if the department cannot determine the disposition information within the allotted time period, the department shall provide the licensee with a conditional approval number.

6. If the buyer is so prohibited, the conditional nonapproval number shall become a nonapproval number.

7. The department shall continue its attempts to obtain the disposition information and may retain a record of all approval numbers granted without sufficient disposition information. If the department later obtains disposition information which indicates:

a. That the potential buyer is not prohibited from owning a firearm, it shall treat the record of the transaction in accordance with this section; or

b. That the potential buyer is prohibited from owning a firearm, it shall immediately revoke the conditional approval number and notify local law enforcement.

8. During the time that disposition of the indictment, information, or arrest is pending and until the department is notified by the potential buyer that there has been a final disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect.

(3) In the event of scheduled computer downtime, electronic failure, or similar emergency beyond the control of the Department of Law Enforcement, the department shall immediately notify the licensee of the reason for, and estimated length of, such delay. After such notification, the department shall forthwith, and in no event later than the end of the next business day of the licensee, either inform the requesting licensee if its records demonstrate that the buyer or transferee is prohibited from receipt or possession of a firearm pursuant to Florida and Federal law or provide the licensee with a unique approval number. Unless notified by the end of said next business day that the buyer or transferee is so prohibited, and without regard to whether she or he has received a unique approval number, the licensee may complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

(4)(a) Any records containing any of the information set forth in subsection (1) pertaining to a buyer or transferee who is not found to be prohibited from receipt or transfer of a firearm by reason of Florida and federal law which records are created by the Department of Law Enforcement to conduct the criminal history record check shall be confidential and exempt from the provisions of s. 119.07(1) and may not be disclosed by the Department of Law Enforcement or any officer or employee thereof to any person or to another agency. The Department of Law Enforcement shall destroy any such records forthwith after it communicates the approval and nonapproval numbers to the licensee and, in any event, such records shall be destroyed within 48 hours after the day of the response to the licensee's request.

(b) Notwithstanding the provisions of this subsection, the Department of Law Enforcement may maintain records of NCIC transactions to the extent required by the Federal Government, and may maintain a log of dates of requests for criminal history records checks, unique approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to such dates for a period of not longer than 2 years or as otherwise required by law.

(c) Nothing in this chapter shall be construed to allow the State of Florida to maintain records containing the names of purchasers or transferees who receive unique approval numbers or to maintain records of firearm transactions.

(d) Any officer or employee, or former officer or employee of the Department of Law Enforcement or law enforcement agency who intentionally and maliciously violates the provisions of this subsection commits a felony of the third degree punishable as provided in s. 775.082 or s. 775.083.

(5) The Department of Law Enforcement shall establish a toll-free telephone number which shall be operational 7 days a week with the exception of Christmas Day and New Year's Day, for a period of 12 hours a day beginning at 9 a.m. and ending at 9 p.m., for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers, and licensed dealers. The Department of Law Enforcement shall employ and train such personnel as are necessary expeditiously to administer the provisions of this section.

(6) Any person who is denied the right to receive or purchase a firearm as a result of the procedures established by this section may request a criminal history records review and correction in accordance with the rules promulgated by the Department of Law Enforcement.

(7) It shall be unlawful for any licensed dealer, licensed manufacturer, or licensed importer willfully and intentionally to request criminal history record information under false pretenses, or willfully and intentionally to disseminate criminal history record information to any person other than the subject of such information. Any person convicted of a violation of this subsection commits a felony of the third degree punishable as provided in s. 775.082 or s. 775.083.

(8) The Department of Law Enforcement shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to this section.

(9) This section shall become effective at such time as the Department of Law Enforcement has notified all licensed importers, licensed manufacturers, and licensed dealers in writing that the procedures and toll-free number described in this section are operational. This section shall remain in effect only during such times as the procedures described in subsection (2) remain operational.

(10) A licensed importer, licensed manufacturer, or licensed dealer is not required to comply with the requirements of this section in the event of:

(a) Unavailability of telephone service at the licensed premises due to the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises of the licensee due to the location of said premises; or the interruption of telephone service by reason of hurricane, tornado, flood, natural disaster, or other act of God, war, invasion, insurrection, riot,

or other bona fide emergency, or other reason beyond the control of the licensee; or

(b) Failure of the Department of Law Enforcement to comply with the requirements of subsections (2) and (3).

(11) Compliance with the provisions of this chapter shall be a complete defense to any claim or cause of action under the laws of any state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year, of any firearm which has been shipped or transported in interstate or foreign commerce. The Department of Law Enforcement, its agents and employees shall not be liable for any claim or cause of action under the laws of any state for liability for damages arising from its actions in lawful compliance with this section.

(12)(a) Any potential buyer or transferee who willfully and knowingly provides false information or false or fraudulent identification commits a felony of the third degree punishable as provided in s. 775.082 or s. 775.083.

(b) Any licensed importer, licensed manufacturer, or licensed dealer who violates the provisions of subsection (1) commits a felony of the third degree punishable as provided in s. 775.082 or s. 775.083.

(c) Any employee or agency of a licensed importer, licensed manufacturer, or licensed dealer who violates the provisions of subsection (1) commits a felony of the third degree punishable as provided in s. 775.082 or s. 775.083.

(d) Any person who knowingly acquires a firearm through purchase or transfer intended for the use of a person who is prohibited by state or federal law from possessing or receiving a firearm commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(13) This section does not apply to employees of sheriff's offices, municipal police departments, correctional facilities or agencies, or other criminal justice or governmental agencies when the purchases or transfers are made on behalf of an employing agency for official law enforcement purposes.

(14) This section is repealed effective June 1, 2002 ~~2000~~.

Section 2. Section 790.166, Florida Statutes, is created to read:

790.166 Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited; definitions; penalties.—

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

(a) "Weapon of mass destruction" means:

1. Any device or object that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

2. Any device or object involving a disease organism; or
3. Any device or object that is designed to release radiation or radioactivity at a level dangerous to human life.

(b) “Hoax weapon of mass destruction” means any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

(c) “Biological agent” means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

1. Death, disease, or other biological malfunction in a human, an animal, a plant, or other living organism;
2. Deterioration of food, water, equipment, supplies, or material of any kind; or
3. Deleterious alteration of the environment.

(d) “Toxin” means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of reproduction, including:

1. Any poisonous substance or biological product that may be engineered through biotechnology produced by a living organism; or
2. Any poisonous isomer or biological product, homolog, or derivative of such substance.

(e) “Delivery system” means:

1. Any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or
2. Any vector.

(f) “Vector” means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, capable of carrying a biological agent or toxin to a host.

(2) A person who, without lawful authority, manufactures, possesses, sells, delivers, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others a weapon of mass destruction, including any biological agent, toxin, vector, or delivery system as those terms are defined in this section, commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided

in s. 775.082, s. 775.083, or s. 775.084, and if death results, commits a capital felony, punishable as provided in s. 775.082.

(3) Any person who, without lawful authority, manufactures, possesses, sells, delivers, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others, a hoax weapon of mass destruction with the intent to deceive or otherwise mislead another person into believing that the hoax weapon of mass destruction will cause terror, bodily harm, or property damage commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) This section does not apply to any member or employee of the Armed Forces of the United States, a federal or state governmental agency, or a private entity who is otherwise engaged in lawful activity within the scope of his or her employment, if such person is otherwise duly authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity relative to this section and if such person is in compliance with applicable federal and state law.

Section 3. Paragraphs (g) and (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920(2)	3rd	Medicaid provider fraud.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

Florida Statute	Felony Degree	Description
782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
<u>790.166(3)</u>	<u>2nd</u>	<u>Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.</u>
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.

Florida Statute	Felony Degree	Description
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b)) within 1,000 feet of a child care facility or school.
893.13(1)(e)	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b), within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 50 lbs., less than 2,000 lbs.

Florida Statute	Felony Degree	Description
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
		(i) LEVEL 9
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
790.161	1st	Attempted capital destructive device offense.

Florida Statute	Felony Degree	Description
<u>790.166(2)</u>	<u>1st,PBL</u>	<u>Possessing, selling, using, or attempting to use a weapon of mass destruction.</u>
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
800.04(5)(b)	1st	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
827.03(2)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.

Florida Statute	Felony Degree	Description
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.

Section 4. This act shall take effect upon becoming a law, except that sections 2 and 3 of this act shall take effect July 1, 2000.

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.