

By Senator Lee

23-1000A-00

See HB 955

1                                   A bill to be entitled  
 2           An act relating to weapons of mass destruction;  
 3           creating s. 790.166, F.S.; prohibiting the  
 4           unlawful manufacture, possession, sale,  
 5           delivery, display, use, or attempted or  
 6           threatened use of a weapon of mass destruction;  
 7           prohibiting unlawful conspiring to use such  
 8           weapon; prohibiting making such weapon readily  
 9           accessible to others; providing a first degree  
 10          felony penalty for violation; providing that  
 11          violation which results in death is a capital  
 12          felony; prohibiting the unlawful manufacture,  
 13          possession, sale, delivery, display, use, or  
 14          attempted or threatened use of a hoax weapon of  
 15          mass destruction; prohibiting unlawful  
 16          conspiring to use such weapon; prohibiting  
 17          making such weapon readily accessible to  
 18          others; providing a second degree felony  
 19          penalty for violation; providing definitions  
 20          for purposes of the act; providing  
 21          nonapplicability of the act; amending s.  
 22          921.0022, F.S., relating to the Criminal  
 23          Punishment Code; providing for ranking the  
 24          offense of possessing, selling, or using a  
 25          weapon of mass destruction and the offense of  
 26          possessing, selling, or using a hoax weapon of  
 27          mass destruction; providing an effective date.

28  
 29 Be It Enacted by the Legislature of the State of Florida:  
 30  
 31

1 Section 1. Section 790.166, Florida Statutes, is  
2 created to read:

3 790.166 Manufacture, possession, sale, delivery,  
4 display, use, or attempted or threatened use of a weapon of  
5 mass destruction or hoax weapon of mass destruction  
6 prohibited; definitions; penalties.--

7 (1) As used in this section, the following terms shall  
8 have the following meanings:

9 (a) "Weapon of mass destruction" means:

10 1. Any destructive device as defined in this section;

11 2. Any weapon that is designed or intended to cause  
12 death or serious bodily injury through the release,  
13 dissemination, or impact of toxic or poisonous chemicals, or  
14 their precursors;

15 3. Any weapon involving a disease organism; or

16 4. Any weapon that is designed to release radiation or  
17 radioactivity at a level dangerous to human life.

18 (b) "Hoax weapon of mass destruction" means any device  
19 or object that by its design, construction, content, or  
20 characteristics appears to be or to contain, or is represented  
21 to be, constitute, or contain, a weapon of mass destruction as  
22 defined in this section, but which is, in fact, an inoperative  
23 facsimile, imitation, counterfeit, or representation of a  
24 weapon of mass destruction which does not meet the definition  
25 of a weapon of mass destruction or which does not actually  
26 contain or constitute a weapon, destructive device, biological  
27 agent, toxin, vector, or delivery system prohibited by this  
28 section.

29 (c) "Biological agent" means any microorganism, virus,  
30 infectious substance, or biological product that may be  
31 engineered through biotechnology, or any naturally occurring

1 or bioengineered component of any such microorganism, virus,  
2 infectious substance, or biological product, capable of  
3 causing:  
4       1. Death, disease, or other biological malfunction in  
5 a human, an animal, a plant, or other living organism;  
6       2. Deterioration of food, water, equipment, supplies,  
7 or material of any kind; or  
8       3. Deleterious alteration of the environment.  
9       (d) "Toxin" means the toxic material of plants,  
10 animals, microorganisms, viruses, fungi, or infectious  
11 substances, or a recombinant molecule, whatever its origin or  
12 method of reproduction, including:  
13       1. Any poisonous substance or biological product that  
14 may be engineered through biotechnology produced by a living  
15 organism; or  
16       2. Any poisonous isomer or biological product,  
17 homolog, or derivative of such substance.  
18       (e) "Delivery system" means:  
19       1. Any apparatus, equipment, device, or means of  
20 delivery specifically designed to deliver or disseminate a  
21 biological agent, toxin, or vector; or  
22       2. Any vector.  
23       (f) "Vector" means a living organism or molecule,  
24 including a recombinant molecule or biological product that  
25 may be engineered through biotechnology, capable of carrying a  
26 biological agent or toxin to a host.  
27       (g) "Destructive device" shall have the same meaning  
28 as that term is defined in s. 790.001(4).  
29       (2) A person who, without lawful authority,  
30 manufactures, possesses, sells, delivers, displays, uses,  
31 threatens to use, attempts to use, or conspires to use, or who

1 makes readily accessible to others a weapon of mass  
2 destruction, other than a chemical weapon as that term is  
3 defined in 18 U.S.C. 229F and s. 790.001, including any  
4 biological agent, toxin, vector, or delivery system as those  
5 terms are defined in this section:  
6 (a) Against any person within the State of Florida,  
7 provided the offense occurs in whole or in part within the  
8 state; or  
9 (b) Against any property that is owned, leased, or  
10 used by the State of Florida or by any department, agency, or  
11 political subdivision of the state, provided the offense  
12 occurs in whole or in part within the state,  
13  
14 commits a felony of the first degree, punishable by  
15 imprisonment for a term of years not exceeding life or as  
16 provided in s. 775.082, s. 775.083, or s. 775.084, and if  
17 death results, commits a capital felony, punishable as  
18 provided in s. 775.082.  
19 (3) Any person who, without lawful authority,  
20 manufactures, possesses, sells, delivers, displays, uses,  
21 threatens to use, attempts to use, or conspires to use, or who  
22 makes readily accessible to others a hoax weapon of mass  
23 destruction commits a felony of the second degree, punishable  
24 as provided in s. 775.082, s. 775.083, or s. 775.084.  
25 (4) The provisions of this section shall not apply to  
26 any member of the Armed Forces of the United States, federal  
27 or state governmental agencies or personnel, or private  
28 entities otherwise engaged in lawful activity within the scope  
29 of his or her employment, if such person is otherwise duly  
30 authorized or licensed to manufacture, possess, sell, deliver,  
31 display, or otherwise engage in activity relative to this

1 section and if such person is in compliance with applicable  
2 federal and state law.

3 Section 2. Paragraphs (g) and (i) of subsection (3) of  
4 section 921.0022, Florida Statutes, are amended to read:

5 921.0022 Criminal Punishment Code; offense severity  
6 ranking chart.--

7 (3) OFFENSE SEVERITY RANKING CHART

8	9 Florida	10 Statute	11 Felony	12 Degree	13 Description
14					(g) LEVEL 7
15		316.193(3)(c)2.		3rd	DUI resulting in serious bodily injury.
16		327.35(3)(c)2.		3rd	Vessel BUI resulting in serious bodily injury.
17		402.319(2)		2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
18		409.920(2)		3rd	Medicaid provider fraud.
19		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.
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					

1	782.051(3)	2nd	Attempted felony murder of a
2			person by a person other than the
3			perpetrator or the perpetrator of
4			an attempted felony.
5	782.07(1)	2nd	Killing of a human being by the
6			act, procurement, or culpable
7			negligence of another
8			(manslaughter).
9	782.071	2nd	Killing of human being or viable
10			fetus by the operation of a motor
11			vehicle in a reckless manner
12			(vehicular homicide).
13	782.072	2nd	Killing of a human being by the
14			operation of a vessel in a
15			reckless manner (vessel
16			homicide).
17	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
18			causing great bodily harm or
19			disfigurement.
20	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
21			weapon.
22	784.045(1)(b)	2nd	Aggravated battery; perpetrator
23			aware victim pregnant.
24	784.048(4)	3rd	Aggravated stalking; violation of
25			injunction or court order.
26	784.07(2)(d)	1st	Aggravated battery on law
27			enforcement officer.
28	784.08(2)(a)	1st	Aggravated battery on a person 65
29			years of age or older.
30	784.081(1)	1st	Aggravated battery on specified
31			official or employee.

1	784.082(1)	1st	Aggravated battery by detained
2			person on visitor or other
3			detainee.
4	784.083(1)	1st	Aggravated battery on code
5			inspector.
6	790.07(4)	1st	Specified weapons violation
7			subsequent to previous conviction
8			of s. 790.07(1) or (2).
9	790.16(1)	1st	Discharge of a machine gun under
10			specified circumstances.
11	<u>790.166(3)</u>	<u>2nd</u>	<u>Possessing, selling, using, or</u>
12			<u>attempting to use a hoax weapon</u>
13			<u>of mass desctruction.</u>
14	796.03	2nd	Procuring any person under 16
15			years for prostitution.
16	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
17			victim less than 12 years of age;
18			offender less than 18 years.
19	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
20			victim 12 years of age or older
21			but less than 16 years; offender
22			18 years or older.
23	806.01(2)	2nd	Maliciously damage structure by
24			fire or explosive.
25	810.02(3)(a)	2nd	Burglary of occupied dwelling;
26			unarmed; no assault or battery.
27	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
28			unarmed; no assault or battery.
29	810.02(3)(d)	2nd	Burglary of occupied conveyance;
30			unarmed; no assault or battery.
31			

1	812.014(2)(a)	1st	Property stolen, valued at
2			\$100,000 or more; property stolen
3			while causing other property
4			damage; 1st degree grand theft.
5	812.019(2)	1st	Stolen property; initiates,
6			organizes, plans, etc., the theft
7			of property and traffics in
8			stolen property.
9	812.131(2)(a)	2nd	Robbery by sudden snatching.
10	812.133(2)(b)	1st	Carjacking; no firearm, deadly
11			weapon, or other weapon.
12	825.102(3)(b)	2nd	Neglecting an elderly person or
13			disabled adult causing great
14			bodily harm, disability, or
15			disfigurement.
16	825.1025(2)	2nd	Lewd or lascivious battery upon
17			an elderly person or disabled
18			adult.
19	825.103(2)(b)	2nd	Exploiting an elderly person or
20			disabled adult and property is
21			valued at \$20,000 or more, but
22			less than \$100,000.
23	827.03(3)(b)	2nd	Neglect of a child causing great
24			bodily harm, disability, or
25			disfigurement.
26	827.04(3)	3rd	Impregnation of a child under 16
27			years of age by person 21 years
28			of age or older.
29	837.05(2)	3rd	Giving false information about
30			alleged capital felony to a law
31			enforcement officer.



1	872.06	2nd	Abuse of a dead human body.
2	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
3			cocaine (or other drug prohibited
4			under s. 893.03(1)(a), (1)(b),
5			(1)(d), (2)(a), or (2)(b)) within
6			1,000 feet of a child care
7			facility or school.
8	893.13(1)(e)	1st	Sell, manufacture, or deliver
9			cocaine or other drug prohibited
10			under s. 893.03(1)(a), (1)(b),
11			(1)(d), (2)(a), or (2)(b), within
12			1,000 feet of property used for
13			religious services or a specified
14			business site.
15	893.13(4)(a)	1st	Deliver to minor cocaine (or
16			other s. 893.03(1)(a), (1)(b),
17			(1)(d), (2)(a), or (2)(b) drugs).
18	893.135(1)(a)1.	1st	Trafficking in cannabis, more
19			than 50 lbs., less than 2,000
20			lbs.
21	893.135		
22	(1)(b)1.a.	1st	Trafficking in cocaine, more than
23			28 grams, less than 200 grams.
24	893.135		
25	(1)(c)1.a.	1st	Trafficking in illegal drugs,
26			more than 4 grams, less than 14
27			grams.
28	893.135		
29	(1)(d)1.	1st	Trafficking in phencyclidine,
30			more than 28 grams, less than 200
31			grams.

1	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
2			than 200 grams, less than 5
3			kilograms.
4	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
5			than 14 grams, less than 28
6			grams.
7	893.135		
8	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
9			grams or more, less than 14
10			grams.
11			(i) LEVEL 9
12	316.193		
13	(3)(c)3.b.	1st	DUI manslaughter; failing to
14			render aid or give information.
15	782.04(1)	1st	Attempt, conspire, or solicit to
16			commit premeditated murder.
17	782.04(3)	1st,PBL	Accomplice to murder in
18			connection with arson, sexual
19			battery, robbery, burglary, and
20			other specified felonies.
21	782.051(1)	1st	Attempted felony murder while
22			perpetrating or attempting to
23			perpetrate a felony enumerated in
24			s. 782.04(3).
25	782.07(2)	1st	Aggravated manslaughter of an
26			elderly person or disabled adult.
27	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
28			reward or as a shield or hostage.
29	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
30			or facilitate commission of any
31			felony.

1	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
2			interfere with performance of any
3			governmental or political
4			function.
5	787.02(3)(a)	1st	False imprisonment; child under
6			age 13; perpetrator also commits
7			aggravated child abuse, sexual
8			battery, or lewd or lascivious
9			battery, molestation, conduct, or
10			exhibition.
11	790.161	1st	Attempted capital destructive
12			device offense.
13	<u>790.166(2)</u>	<u>1st</u>	<u>Possessing, selling, using, or</u>
14			<u>attempting to use a weapon of</u>
15			<u>mass destruction.</u>
16	794.011(2)	1st	Attempted sexual battery; victim
17			less than 12 years of age.
18	794.011(2)	Life	Sexual battery; offender younger
19			than 18 years and commits sexual
20			battery on a person less than 12
21			years.
22	794.011(4)	1st	Sexual battery; victim 12 years
23			or older, certain circumstances.
24	794.011(8)(b)	1st	Sexual battery; engage in sexual
25			conduct with minor 12 to 18 years
26			by person in familial or
27			custodial authority.
28	800.04(5)(b)	1st	Lewd or lascivious molestation;
29			victim less than 12 years;
30			offender 18 years or older.
31			

1	812.13(2)(a)	1st,PBL	Robbery with firearm or other
2			deadly weapon.
3	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
4			deadly weapon.
5	827.03(2)	1st	Aggravated child abuse.
6	847.0145(1)	1st	Selling, or otherwise
7			transferring custody or control,
8			of a minor.
9	847.0145(2)	1st	Purchasing, or otherwise
10			obtaining custody or control, of
11			a minor.
12	859.01	1st	Poisoning food, drink, medicine,
13			or water with intent to kill or
14			injure another person.
15	893.135	1st	Attempted capital trafficking
16			offense.
17	893.135(1)(a)3.	1st	Trafficking in cannabis, more
18			than 10,000 lbs.
19	893.135		
20	(1)(b)1.c.	1st	Trafficking in cocaine, more than
21			400 grams, less than 150
22			kilograms.
23	893.135		
24	(1)(c)1.c.	1st	Trafficking in illegal drugs,
25			more than 28 grams, less than 30
26			kilograms.
27	893.135		
28	(1)(d)1.c.	1st	Trafficking in phencyclidine,
29			more than 400 grams.
30			
31			

1 893.135  
2 (1)(e)1.c. 1st Trafficking in methaqualone, more  
3 than 25 kilograms.  
4 893.135  
5 (1)(f)1.c. 1st Trafficking in amphetamine, more  
6 than 200 grams.  
7 Section 3. This act shall take effect July 1, 2000.  
8

9 \*\*\*\*\*

10 LEGISLATIVE SUMMARY

11 Prohibits the unlawful manufacture, possession, sale,  
12 delivery, display, use, or attempted or threatened use of  
13 a "weapon of mass destruction" or a "hoax weapon of mass  
14 destruction," as defined by the act. Prohibits unlawful  
15 conspiring to use such weapons and making such weapons  
16 readily accessible to others. Provides a first degree  
17 felony penalty for violation with respect to a weapon of  
18 mass destruction and provides that violation which  
19 results in death is a capital felony. Provides a second  
20 degree felony penalty for violation with respect to a  
21 hoax weapon of mass destruction. Ranks the offenses for  
22 purposes of sentencing under the Criminal Punishment  
23 Code.  
24  
25  
26  
27  
28  
29  
30  
31