

SENATE BILL REPORT

SB 5160

AS OF JANUARY 22, 1993

Brief Description: Changing provisions relating to firearms.

SPONSORS: Senator Talmadge

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Jon Carlson (786-7459)

Hearing Dates: January 26, 1993

BACKGROUND:

Definition. Under the state Firearms Act, a "short firearm" or "pistol" is defined as any firearm with a barrel less than twelve inches in length.

Unlawful Possession or Ownership of a Pistol. A person is guilty of the crime of unlawful possession of a short firearm or pistol if the person owns or has in his or her possession a short firearm or pistol and 1) has been convicted or, as a juvenile, adjudicated of a crime of violence or of a felony in which a firearm was used or displayed; or 2) has been convicted or adjudicated of any felony violation of the Uniform Controlled Substances Act. The prohibition extends to any firearm if a person has been subjected to a period of confinement under the criminal insanity statute, or at least 90 days confinement under the state's Involuntary Treatment Act. Unlawful possession of a short firearm or pistol is a class C felony.

Concealed Pistol Licenses. A person who applies for a concealed pistol license will be issued the license for the purposes of protection or while engaged in business, sport, or while travelling if he or she complies with the various requirements of the Firearms Act. The license must be revoked by the issuing authority upon conviction of a crime which makes the person ineligible to own a pistol. A person convicted of certain lesser offenses, and who has successfully completed the terms of his or her sentence, may petition the district court for a declaration that he or she is no longer ineligible for a concealed pistol license.

Any person whose firearms rights have been restricted must have his or her rights restored if the United States Secretary of the Treasury removes any disabilities imposed by federal law. The Secretary may grant relief if the applicant's record and reputation are such that the applicant is not likely to act in a manner dangerous to public safety, and that the granting of relief would not be contrary to the public interest.

In addition, a person must have his or her firearms rights restored if, under the federal law, a person's conviction has been expunged, set aside, or for which a person has been pardoned or has had civil rights restored unless the pardon, expungement or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Commercial Sale of a Pistol. Before a commercial seller delivers a pistol to a purchaser, the purchaser must either: 1) produce a valid concealed pistol license; 2) have a notification transmitted to the seller by the police chief or sheriff indicating that the purchaser meets the statutory requirements for ownership or possession of firearms; or 3) wait five consecutive days from the time the seller receives the purchase application while the local jurisdiction determines the applicant's eligibility to purchase the pistol. In some instances, the waiting period may be as much as 60 days.

Seizure and Forfeiture of Firearms. Firearms illegally used or possessed may, under certain circumstances, be seized and forfeited. When firearms are forfeited, one of three actions must be taken. Firearms that are illegal for anyone to possess are to be destroyed. Up to 10 percent of other firearms may be retained by law enforcement agencies for their own use. The remainder of the forfeited firearms are sold at auction to commercial sellers.

The proceeds from the sale of forfeited firearms are divided as follows: The agency which seized the firearms is reimbursed for the cost of storage and sale. The rest of the proceeds go to the state Department of Wildlife for use in its firearms training program.

Firearms on School Grounds. Elementary or secondary students under the age of 21 are prohibited from carrying firearms or dangerous weapons onto elementary or secondary school premises.

Exemptions exist for students of private military academies, students in government-sponsored military activities, students attending a convention or authorized firearms safety course in which firearms are handled or displayed, students who possess weapons to be used in martial arts classes on school premises, or students participating in an approved firearms or air gun competition. Violation of the statute is a gross misdemeanor and grounds for expulsion.

Firearms in the Courtroom. It is unlawful to possess a firearm in a courtroom or judge's chamber while either is being used for any judicial proceeding. Judges or court employees are not subject to this prohibition if they obtain written permission from the court administrator to possess the firearm before entering the restricted area.

Firearms and Minors. Accidental shootings involving children have often occurred because loaded guns were left accessible

in the home. In response to that concern, Florida (in 1989) became the first state to require that firearms be kept in locked cases or be stored with trigger locks in homes where children can be found. Similar legislation is suggested in this state to protect children from accidents that result from the careless storage of firearms, while continuing to uphold the adult citizens' existing firearm guarantees under the federal and state constitutions.

Firearms on the Capitol Campus Grounds. The Capitol Campus is the frequent site of public demonstrations. In addition, both houses of the Legislature are open to the public during legislative sessions. On occasion, controversial issues may draw individuals who threaten to disrupt the orderly legislative process. Administrative regulations prohibit the possession of firearms or dangerous weapons on the Capitol Campus or legislative buildings. However, a violation of this prohibition constitutes a traffic infraction, and does not empower law enforcement with arrest authority.

Arrest without a Warrant. Principals or other school officials confiscate firearms and dangerous weapons that students bring into schools or onto school grounds. However, police are unable to make a subsequent arrest because they are not authorized to arrest a person committing a misdemeanor or a gross misdemeanor unless the offense is committed in the presence of the officer.

SUMMARY:

A number of substantive revisions is made to the state Firearms Act.

Definitions. "Semiautomatic firearm" means a firearm having an automatic chambering mechanism but requiring the manual operation of the trigger for each round fired. "Antique firearm" means any firearm manufactured on or before 1918.

Unlawful Possession or Ownership of Semiautomatic Firearms. The existing provisions of the Firearms Act relating to the unlawful possession or ownership of short firearms or pistols are now applicable to semiautomatic firearms.

Semiautomatic Firearm Licenses. In order for a person to legally carry a semiautomatic firearm, he or she must obtain a semiautomatic firearm license. The existing provisions relating to issuance, eligibility, and revocation of concealed pistol licenses are applicable to semiautomatic firearm licenses.

The provision which requires the restoration of a person's firearm rights if his or her conviction has been expunged, set aside, or for which a person has been pardoned or has had civil rights restored is deleted.

Commercial Sale of a Pistol or Semiautomatic Firearm. Before a commercial seller delivers a pistol or a semiautomatic firearm to a purchaser, the purchaser must produce a valid

concealed pistol license or semiautomatic firearm license and either: 1) have a notification transmitted to the seller by the police chief or sheriff indicating that the purchaser meets the statutory requirements for ownership or possession of firearms; or 2) wait five consecutive days from the time the seller receives the purchase application while the local jurisdiction determines the applicant's eligibility to purchase the pistol.

Seizure and Forfeiture of Firearms. A new division is made of the proceeds from the sale of forfeited firearms, and law enforcement agencies are given an alternative to sale for disposing of firearms. The agency which seizes the firearms may keep 60 percent of the proceeds, to be used by the agency exclusively for law enforcement purposes. The remaining 40 percent goes to the state firearms range account for use in the purchase of land and the development and operation of firearms ranges. Instead of selling forfeited firearms, an agency may trade the weapons to a commercial dealer for other firearms or police equipment.

The requirement that forfeited legal firearms be sold is removed. Local jurisdictions may, by ordinance, provide for the destruction of such firearms. Antique firearms are exempted from destruction.

Firearms on School Grounds. The prohibition against carrying firearms or other dangerous weapons onto school premises is extended to all persons. The current exemptions granted to students are also broadened to include all persons. However, the exemption for students of private military academies is extended only to academy employees.

The requirement that military activities be sponsored by the federal or state government is deleted. The exemption for attendance at a convention or approved firearms safety course is changed to involvement in a convention, showing, demonstration, lecture, or firearms safety course.

An exemption is added for any person legally in possession of a firearm while the person is within a vehicle, or while the person is away from the vehicle if the firearm is locked within the vehicle and concealed from view. A further exemption is provided for any person who is legally in possession of a concealed pistol.

Exemptions are added for any law enforcement officer of any federal, state, or local governmental agency.

Firearms and Weapons in the Courtroom. The current prohibition against possessing a firearm in a courtroom or judge's chamber while either is being used for judicial proceedings is expanded to include weapons. "Weapon," for purposes of this section, means any firearm, or explosive instrument, or weapon as elsewhere defined in the code.

The weapons prohibition also includes the jury room and the waiting area adjacent to a courtroom used by participants in

court proceedings. The restricted areas do not include common areas or areas of egress or ingress of the courthouse or any building used as a courthouse. The court administrator may use weapon detection devices in common areas adjacent to restricted areas.

Restricted areas must be designated and marked by the court administrator. A sign must also be posted at the entrance to a courthouse which explains the prohibition against weapons in restricted areas.

The weapons prohibition does not apply to a judge, attorney, or employee of a federal, state, or local law enforcement agency while such employee is engaged in employment-related duties when the employee obtains written permission from the court administrator to possess the firearm. Any other person who lawfully possesses a firearm by virtue of a concealed pistol license must check the firearm with the court administrator before entering the restricted area.

A person who violates the prohibition against possession of a weapon in a restricted area is guilty of a gross misdemeanor.

Firearms and Minors. A person is guilty of a misdemeanor if 1) he or she improperly stores or leaves a loaded firearm on a premise; and 2) a child subsequently gains access to the firearm without lawful permission or supervision and exhibits the firearm in a public place or in a criminally negligent manner.

A person who improperly stores or leaves a firearm within easy reach of a child is guilty of a class C felony if the child obtains the firearm and uses it to inflict injury or death upon himself or herself or any other person. The circumstances under which this provision is not applicable are also enumerated. In addition, when a child is accidentally shot by another family member, no arrest may be made prior to seven days after the shooting.

Proper storage under this act requires that a person keep the firearm in a locked container, a secure location, or secured with a trigger lock whenever a person, on a premise under his or her control, should reasonably know that a child is likely to gain access to the firearm without lawful permission or supervision. The storage requirements are not applicable when the firearm is being carried by or is in close proximity to the person.

All firearm dealers are required to warn purchasers in writing that it is unlawful to store or leave a firearm within the reach or easy access of a child. Retail or wholesale stores that sell firearms must conspicuously post such warning at each purchase counter. Failure to comply with the warning requirement is a misdemeanor.

Firearms on the Capitol Campus Grounds. Firearms are prohibited in certain buildings on the west state Capitol Campus grounds. Buildings covered by the prohibition are the:

Legislative Building; John L. O'Brien Building; John A. Cherberg Building; Temple of Justice; General Administration Building; Governor's Mansion; Insurance Building; State Library; Institutions Building; and the Public Information Building.

Exceptions to the prohibition are provided for: 1) law enforcement personnel; 2) persons with concealed pistol licenses who notify the State Patrol; and 3) persons possessing firearms for the express purpose of a demonstration or lecture involving the exhibition of firearms.

The State Patrol must post a notice on each of the buildings which explains who may and who may not carry a weapon into the building.

Arrest Without a Warrant. A police officer may make a warrantless arrest if he or she has probable cause to believe that a person unlawfully possesses firearms or dangerous weapons on school premises.

Appropriation: none

Revenue: none

Fiscal Note: requested

Effective Date: January 1, 1994 (Sections 8-12)