

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 Committee on Judiciary

BILL: SB 646

INTRODUCER: Senator Steube

SUBJECT: Weapons and Firearms

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 646 revises several statutes in chapter 790, F.S., that regulate concealed weapons and firearms.

Two of these revisions reduce the penalties for two non-violent offenses involving a firearm or weapon to a noncriminal offense with a \$25 penalty. One offense to which the reduced penalty applies is the unlawful and open carry of a firearm. The other offense is the knowing and willful carry of a concealed weapon by a concealed weapon or firearm licensee into a place prohibited by statute. Currently, these offenses are second degree misdemeanors, punishable by up to 60 days in jail and a fine not to exceed \$500.

Also, the bill expands the authority under a concealed weapon or firearm license that is held by a member of the Florida Cabinet who does not have full-time security provided by the Department of Law Enforcement. These Cabinet members are authorized to carry a concealed weapon anywhere not prohibited by federal law.

Finally, relating to the general ban on openly carrying firearms, the bill revises the exemption from this ban for a concealed carry licensee who briefly displays a firearm. The language of this exemption in current law does not clearly indicate whether the exemption applies to inadvertent displays or only to only displays that are necessary for self-defense. The bill deletes language in current law that implies that the protections from prosecution apply only to displays made in self-defense.

II. Present Situation:

Open Carry of Firearms

Open Carry Generally Prohibited

As a general matter, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹

Lawful for Concealed Carry Licensee to Briefly and Openly Display Firearm

The statute banning open carry of firearms exempts a concealed carry licensee who is lawfully carrying concealed if he or she “briefly and openly displays the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.”²

The language of the exemption is not completely clear. It does not indicate how long a *brief* display of a firearm may be. Also, this language might be read to require that a display of a firearm be in necessary self-defense. As a result of this narrow reading, the inadvertent display of a concealed firearm might subject a person to arrest for violating the open carry ban.

Concealed Carry of Weapons and Firearms

Concealed Carry Generally Prohibited

As a general matter, the unlicensed carrying of a concealed weapon, or electric weapon or device, is a first degree misdemeanor³ and the carrying of a concealed firearm is a third degree felony.⁴ This prohibition on persons carrying concealed weapons or firearms is subject to exceptions, including this state’s concealed carry licensing scheme.⁵

¹ Sections 775.082(4)(b) and 775.083(1)(e), F.S. Neither “openly carrying,” “open carry,” nor any derivation of these terms is defined in the Florida Statutes. The ban on open carrying of firearms is subject to exceptions. Specifically, s. 790.25(3), F.S. sets forth a long and diverse list of persons who are not subject to the ban on openly carrying a firearm, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

² Section 790.053(1), F.S. To be precise, this provision does not affirmatively state that this conduct is legal, just that it does not violate s. 790.053, F.S. Also, this is the extent to which a concealed carry license permits a licensee to carry a firearm openly, and there is no provision for an open carry license in the Florida Statutes.

³ A first degree misdemeanor is punishable by a jail sentence not to exceed 1 year and a \$1,000 fine. Sections 775.082(4)(a), 775.083(1)(d), F.S.

⁴ A third degree felony is punishable by a prison sentence not to exceed 5 years and a \$5,000 fine. Sections 775.082(9)(a)3.d., 775.083(1)(c), F.S. Section 790.02, F.S., provides that the carrying of a concealed firearm in violation of section 790.01, F.S., constitutes a breach of peace, for which an officer may make a warrantless arrest if the officer has “reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.”

⁵ Section 790.25(3), F.S., sets forth a long and diverse list of persons who are not subject to the licensing scheme, and who apparently may carry concealed without a license, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

Licensed Concealed Carry

Florida's concealed carry licensing scheme is set forth at s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.⁶ Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license.⁷

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services. The Department *must* grant this license to each applicant who:⁸

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;⁹
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any 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;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and

⁶ "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

⁷ As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

⁸ Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

⁹ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to the provision.

- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The licensing statute states that a “person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the [ban on carrying concealed weapons].”¹⁰ As a result, the statute suggests that licensees may carry concealed weapons and firearms throughout the state, as a general matter.

However, the statute also expressly states that the license does not permit a licensee to carry into any of a long list of places set forth in the statute, including K-12 facilities, college or university facilities, courthouses, bars, airport terminals, several types of government meetings, and any place prohibited by federal law.¹¹ And if a licensee carries into any of these places without independent justification,¹² he or she commits a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹³

III. Effect of Proposed Changes:

Violation of the Prohibition on Open Carry of Firearms is Non-Criminal

Under current law, as a general matter, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹⁴

The bill modifies the nature and consequence of violating the statute prohibiting open carry of firearms. Specifically, the bill changes this violation to a non-criminal offense, punishable by a \$25 fine payable to the clerk of the court.

Carrying Firearms into Prohibited Places by Concealed Carry Licensees is Non-Criminal

In short, the bill changes the nature and consequence of the offense of a concealed weapons and firearms licensee carrying a concealed weapon or firearm into a place prohibited by the licensing statute. Specifically, the bill changes this violation from a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500, to a non-criminal violation, punishable by a \$25 fine payable to the clerk of the court.

¹⁰ Section 790.06(1), F.S.

¹¹ Section 790.06(12)(a), F.S.

¹² For example, s. 790.25(3), F.S. authorizes the persons there listed to carry concealed without a license, and expressly exempts these persons from the licensing statute. Therefore, apparently a licensee who is also one of the persons listed at section 790.25(3), F.S. could carry into the places listed in the licensing statute as place into which a license not authorize carrying a weapon or firearm.

¹³ Note that this does not appear to be the type of crime that would be grounds for the revocation of the license pursuant to s. 790.06(3), F.S.

¹⁴ Sections 775.082(4)(b), 775.083(1)(e), F.S. Neither “openly carrying,” “open carry,” nor any derivation of these terms is defined in the Florida Statutes.

Lawful Temporary and Open Display of Firearm by Concealed Carry Licensees

The bill, like current law, specifies that a concealed carry licensee who is lawfully carrying concealed, then briefly displays a firearm, does not violate the statute banning the open carry of firearms. However, the bill modifies this exemption from the open carry ban in several ways.

First, in current law, this provision prohibits displaying the firearm in an “angry or threatening manner.” The bill removes this language. However, this change does not necessarily mean that, under the bill, a licensee may display his or her weapon in any manner he or she chooses. For instance, by displaying a firearm in an angry and threatening manner, one may commit an aggravated assault. Indeed, “displaying a firearm in an angry or threatening manner” is a fair, plain-language description of a type of aggravated assault.¹⁵

Second, the bill clarifies that the brief display of a firearm by a licensee no longer needs to be in self-defense. Thus, licensees will be free of fear that their inadvertent, short, non-self-defense display of their firearms will result in an arrest or a criminal penalty.

Carry Rights for Licensees Who Are Members of the Florida Cabinet

Article IV, Section 4 of the Florida Constitution states that the Florida Cabinet is comprised of the Commissioner of Agriculture, the Attorney General, and the Chief Financial Officer. The bill authorizes any member of the Cabinet who is a licensee and who does not have full-time security provided by the Florida Department of Law Enforcement to carry a concealed weapon or firearm anywhere not prohibited by federal law.

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ See ss. 784.011 and 784.021, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill reduces penalties for certain non-violent offenses with a firearm from a second degree misdemeanor to a non-criminal offense, punishable by a \$25 fine.

C. Government Sector Impact:

By reducing penalties for non-violent offences with a firearm, the bill may reduce burden on the court system, as well as on prosecutors and public defenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 790.053 and 790.06 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.