

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 779 Weapons and Firearms
SPONSOR(S): Criminal Justice Subcommittee, Combee and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 5 N	White	White
2) Judiciary Committee			

SUMMARY ANALYSIS

Florida law generally prohibits the open carrying of firearms and certain weapons. Section 790.053, F.S., makes it a second degree misdemeanor for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms (licensee), if the licensee 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."

The bill amends s. 790.053, F.S., to change the penalties that apply to an open carry violation by a licensee. Under the bill, a licensee commits:

- A noncriminal violation with a penalty of:
 - \$25, payable to the clerk of the court, for a first violation; or
 - \$500, payable to the clerk of court, for a second violation.
- A misdemeanor of the second degree for a third or subsequent violation.

A person who is not a licensee continues to be subject to current law's second degree misdemeanor penalty for open carry.

The bill also moves the exception in s. 790.053, F.S., relating to a brief and open display of a firearm by a licensee, to s. 790.06(1), F.S., where it will state:

A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's text relating to the intentional display of a firearm in an angry or threatening does not appear to have any substantive effect given that such behavior will constitute a violation of other criminal statutes.

The bill does not appear to have a fiscal impact on state government. The bill may increase local government revenues and decrease local government expenditures. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill takes effect on July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Regulations Relating to the Open and Concealed Carry of Weapons and Firearms

Generally, in Florida, an individual is authorized to own, possess, and lawfully use a firearm and other weapon¹ without a license if the individual is not statutorily prohibited from possessing a firearm or weapon² and such possession and use occurs in a lawful manner and location.³

Open Carry

Florida law prohibits the open carrying of firearms and certain weapons unless an exception applies. Section 790.053, F.S., makes it a second degree misdemeanor⁴ for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms (licensee),⁵ if the licensee 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."^{6, 7}

According to data from the Florida Department of Law Enforcement for calendar years 2006 through 2015, the average number of arrests for the second degree misdemeanor violation of s. 790.053, F.S., was 157.5 arrests annually with a low of 113 arrests in CY 2013 and a high of 210 arrests in CY 2008.⁸

Concealed Carry

In order to lawfully carry a concealed weapon or concealed firearm, a person, unless exempted, must obtain a license from the Department of Agriculture and Consumer Services (licensee).⁹ Currently, there are approximately 1.7 million licensees in this state.¹⁰

If a person is unlicensed, s. 790.01, F.S., specifies that it is a:

- A first degree misdemeanor¹¹ for the person to carry a concealed weapon¹² or electric weapon or device¹³ on or about his or her person.¹⁴

¹ Section 790.001(13), F.S., defines "weapon" as "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."

² There are numerous prohibitions in statute specifying individuals who may not lawfully possess a gun. *See, e.g.*, ss. 790.22 and 790.23, F.S., (prohibiting the possession of firearms and certain weapons by minors, convicted felons, and delinquents, except under specified circumstances).

³ *See* s. 790.25, F.S.

⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁵ The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun" s. 790.06(1), F.S.

⁶ s. 790.053(1), F.S.

⁷ Section 790.053(2), F.S., also specifies that a person may openly carry for purposes of lawful self-defense a self-defense chemical spray and a nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

⁸ E-mail from Rachel Truxell, Florida Department of Law Enforcement, May 4, 2016 (on file with House of Representatives, Criminal Justice Subcommittee).

⁹ s. 790.06, F.S.

¹⁰ 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).

¹¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹² Section 790.001(3)(a), F.S., defines the term "concealed weapon" as "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person." The weapons listed in this definition require licensure to carry them in a concealed manner.

¹³ Section 790.001(14), F.S., defines the term "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."

- A third degree felony¹⁵ to carry a concealed firearm.^{16, 17, 18}

These prohibitions do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during certain mandatory evacuation orders.
- A person who carries for purposes of lawful self-defense in a concealed manner:
 - A self-defense chemical spray.¹⁹
 - A nonlethal stun gun or dart-firing stun gun²⁰ or other nonlethal electric weapon or device that is designed solely for defensive purposes.²¹

Exemptions from Open Carry Prohibitions and Licensure Requirements: Section 790.25(3), F.S., provides that certain persons under specified circumstances are exempt from the requirements for a license to carry concealed weapons or concealed firearms in s. 790.06, F.S., and the limitations on open carrying in s. 790.053, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.
- Citizens of this state subject to duty under certain sections of law if on duty or when training or preparing themselves for military duty.
- Persons carrying out or training for emergency management duties under chapter 252, F.S.
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.
- Officers or employees of the state or United States duly authorized to carry a concealed weapon.
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits.
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.

¹⁴ s. 790.01(1), F.S.

¹⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁶ Section 790.001(2), F.S., defines the term, "concealed firearm" as "any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person."

¹⁷ s. 790.01(2), F.S.

¹⁸ The carrying of a concealed weapon in violation of s. 790.01, F.S., is statutorily designated as 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. s. 790.02, F.S.

¹⁹ Section 790.001(3)(b), F.S., defines the term "self-defense chemical spray" as "a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical."

²⁰ Section 790.001(15), F.S., defines the term "dart-firing stun gun" as "any device having one or more darts that are capable of delivering an electrical current."

²¹ s. 790.01(3), F.S.

- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.
- A person firing weapons in a safe and secure indoor range for testing and target practice.
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.
- A person possessing arms at his or her home or place of business.
- Investigators employed by the public defenders and capital collateral regional counsel of the state while carrying out official duties.²²

Effect of Bill

The bill amends s. 790.053, F.S., to change the penalties that apply to a violation of the prohibition against open carry by a licensee. Under the bill, a licensee commits:

- A noncriminal violation with a penalty of:
 - \$25, payable to the clerk of the court, for a first violation; or
 - \$500, payable to the clerk of court, for a second violation.
- A misdemeanor of the second degree for a third or subsequent violation.

If a person is not a licensee, the second degree misdemeanor penalty under current law for any violation of the prohibition continues to apply.

The bill also repeals the exception in s. 790.053, F.S., which provides that it is not a violation of the prohibition against open carry for a licensee to briefly and openly display 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. This exception is moved to s. 790.06(1), F.S., where it states:

A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's text relating to the intentional display of a firearm in an angry or threatening manner is clarifying and does not appear to have any substantive effect given that such behavior will constitute criminal assault²³ or a violation of s. 790.10, F.S.,²⁴ unless it is a justifiable use of force.

The bill reenacts ss. 943.051(3)(b), 985.11(1)(b), and . 985.11(1)(b), F.S., to incorporate amendments made by the act to provisions of law which are cross-referenced in the reenacted sections.

The bill takes effect on July 1, 2017.

B. SECTION DIRECTORY:

²² s. 790.25(3), F.S.

²³ See ss. 784.011 and 784.021, F.S. (providing that assault is a first degree misdemeanor and that assault with a deadly weapon is a third degree felony, respectively).

²⁴ s. 790.10, F.S. (makes it a first degree misdemeanor to rudely, carelessly, angrily, or threateningly exhibit a weapon or firearm in the presence of a person).

Section 1. Amends s. 790.053, F.S., relating to the open carrying of weapons.

Section 2. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 3. Reenacting s. 943.051(3)(b), F.S., relating to criminal justice information.

Section 4. Reenacting s. 985.11(1)(b), F.S., relating to fingerprinting and photographing.

Section 5. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Clerks of court may receive revenue from the fines created by the bill for the first two violations of the open carry prohibition in s. 790.53, F.S., by a licensee.
2. Expenditures: The bill may reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition in s. 790.53, F.S., by a licensee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Creates a tiered penalty system for a violation of s. 790.053, F.S., which is applicable only to licensees. This penalty system is substituted for the bill's creation of a \$25 fine for any violation of s. 790.053, F.S., by any person.
- States in s. 790.06(1), F.S., that a licensee may not be arrested or charged with a violation of s. 790.053, F.S., for temporarily and openly displaying his or her firearm; whereas, the bill stated that such licensee could not be arrested or charged with a crime.
- Removes the provision authorizing a Cabinet member licensee to carry anywhere not prohibited by federal law if he or she does not have full-time security.
- Removes the amendment to s. 790.06(12)(d), F.S., that reduced the second degree misdemeanor penalty in current law to a \$25 fine.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.