

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: CS/SB 722

INTRODUCER: Infrastructure ad Security Committee, Judiciary Committee and Senator Hooper

SUBJECT: Carrying of Firearms by Tactical Medical Professionals

DATE: April 2, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 722 expressly authorizes a “tactical medical professional” (TMP) who has a concealed weapons and firearms license to carry firearms, weapons, and ammunition when he or she is actively operating in direct support of a tactical law enforcement operation. For the authorization to apply, the bill also requires the law enforcement agency head to have appointed the TMP, the agency to have an established policy for these appointments, and the TMP to have completed two types of firearm training, one of which must be provided by the agency.

In addition to this express authorization to carry firearms, weapons, and ammunition, the bill also grants a TMP who is authorized to carry a firearm or other weapon during an operation the same “immunities and privileges” as a law enforcement officer. However, a TMP may not make an arrest. The immunities and privileges provision might authorize a TMP to carry a concealed or unconcealed firearm or weapon whenever a law enforcement officer may, which is anytime the officer is “carrying out official duties in this state.”

The bill defines “tactical medical professional” as a paramedic, physician, or osteopathic physician who is appointed to provide medical services directly to a tactical law enforcement unit engaged in high-risk incidents, such as drug raids and hostage situations.

II. Present Situation:

Overview

A paramedic or physician who has a concealed weapons and firearms license and who is engaged in a tactical law enforcement operation may carry a weapon or firearm depending on the location of the operation, the type of weapon or firearm, and the manner of carry. For example, if the operation takes place at a park, the person may carry a concealed firearm, or an openly carried or concealed weapon. If the operation takes place at a courthouse, the person may carry only an unconcealed weapon, but no firearm. If the operation takes place at a school, the person may not carry a firearm or weapon.

If the paramedic or physician qualifies as an “assistant” of a “law enforcement officer,” he or she may be able to carry a weapon or firearm in any manner and in any place that is not a school. The law, however, is not clear as to who qualifies as an assistant of a law enforcement officer.¹

Licensed Concealed Carry of Firearms and Weapons

Although the law generally prohibits a person from carrying a firearm on his or her person, this prohibition is subject to several exceptions. Of these exceptions, perhaps the most well-known and broadly applicable is the concealed weapons and firearms license.²

The license authorizes a person to carry a concealed handgun “throughout the state.” However, the license does not authorize a person to carry a firearm into any of a list of places, including police stations, legislative meetings, prisons, local government meetings, “school facilities and administration buildings” or “college or university facilities.”

To obtain a concealed firearm license, a person must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:³

- 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 that prevents the safe handling of a weapon or firearm;

¹ The only authority that Staff were able to uncover interpreting the meaning of “assistant” of a “law enforcement officer” was a 1994 advisory opinion of the attorney general. Op. Att’y Gen. Fla. 94-65 (1994). In the opinion, the attorney general determined that a police department’s fingerprint technician was not an “assistant” under the relevant statute, s. 790.25(3)d., F.S. For several reasons, this opinion offers little if any guidance in determining whether a paramedic or physician would qualify as an assistant because the opinion addressed someone in a substantially different role.

² As of December 31, 2018, 1,941,180 Floridians held a standard concealed firearm license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf.

³ Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S., which also sets forth criteria for the mandatory revocation of a license.

- 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;
- Has not been found guilty of a crime relating to controlled substances within a three-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 competency in the use of a firearm;⁴
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- 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 which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Lawful Unlicensed Carry of Firearms and Weapons

Section 790.25(3), F.S., provides a long list of persons who may lawfully carry concealed or unconcealed firearms or weapons regardless of whether they have a concealed weapons and firearms license.⁵ Many of the persons on the list are specified military and law enforcement personnel, including:

Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers . . . 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.⁶

Who qualifies as an “assistant” to a law enforcement officer is not further described. As a result, it is unclear as to whether a paramedic or physician who is part of a tactical law enforcement team would qualify as an “assistant” to a law enforcement officer.

⁴ 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 this provision.

⁵ Although s. 790.25(3), F.S., is not perfectly clear that it authorizes the unlicensed concealed or unconcealed carry of a firearm, especially when read in light of s. 790.25(2), F.S., the courts have nonetheless stated that it does. *See, e.g., State v. Little*, 104 So. 3d 1263, (Fla. 4th DCA 2013) (holding that a union secretary carrying a concealed firearm at the union hall parking lot was exempt from the general ban on concealed carry in s. 790.01, F.S., by virtue of section 790.25(3)(n), F.S.); *Norman v. State*, 215 So. 3d 18, 22 (Fla. 2017) (stating that “pursuant to chapter 790, Florida law provides sixteen exceptions to Florida’s Open Carry Law . . .” and that s. 790.25(3), F.S., provides “a list of sixteen statutory exceptions to the [law prohibiting the open carry of a firearm].”

⁶ Section 790.25(3)d., F.S. (emphasis added).

Prohibited Possession of a Firearm on School Property

Schools are perhaps the only places in this state that are subject to a broad, stand-alone weapons and firearms ban in this state's statutes.⁷ Regardless of whether a person has a concealed weapons and firearms license, s. 790.115, F.S., broadly prohibits a person, other than a law enforcement officer, from possessing a firearm on the property of any "school," meaning any preschool through postsecondary school, whether public or private.⁸ And the law is unclear as to how the prohibition in this statute interacts with the authority for unlicensed carry of weapons and firearms granted in s. 790.25(3), F.S.

Federal Law

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place an individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.⁹ However, this prohibition does not apply to a person who is licensed by his or her state to carry a concealed handgun.¹⁰

Federal law also prohibits a person from carrying a firearm in the "sterile area" of an airport terminal, which is the part of the airport that a passenger can only reach after going through security screening.¹¹ None of the exceptions to this prohibition clearly apply to a paramedic or physician assisting a tactical law enforcement team.¹²

Additionally, a person may not possess a firearm in a post office, except for official purposes.¹³

Privileges and Immunities of Law Enforcement Officers

The law affords law enforcement officers several types of special treatment, some of which are described as a "privilege" or "immunity" in the Florida Statutes, which state that a law enforcement officer:

- Is exempt from the ban on carrying a firearm on school property.¹⁴
- May carry a concealed or unconcealed firearm, without a concealed weapons and firearms license, if he or she is "carrying out official duties."¹⁵
- May carry a concealed firearm or weapon without a license while off duty.¹⁶

⁷ At several other places, the statutes *effectively* ban *most* people from carrying firearms and concealed weapons. The statutes do this by stating that the concealed weapons and firearms license does not authorize a person to carry at those places. Without that authority, even license holders are subject to the general ban on carrying firearms and concealed weapons at those places.

⁸ It also means any career center. Section 790.115(2)(a), F.S.

⁹ 18 U.S.C. § 922(q)(2)(A).

¹⁰ See 18 U.S.C. § 922(q)(2)(B)(ii).

¹¹ 49 CFR § 1540.111. For a precise definition of "sterile area," see 49 CFR § 1540.5.

¹² See 49 CFR § 1540.111(b).

¹³ 39 C.F.R. § 232.1.

¹⁴ Section 790.115(3), F.S.

¹⁵ Section 790.025(3)(d), F.S.

¹⁶ See s. 790.06(5)(b), F.S., which appears to authorize a law enforcement officer to carry a concealed weapon or firearm without a license. Also, s. 790.052, F.S., authorizes a law enforcement officer to carry a concealed firearm while off duty, at the discretion of his or her superior officers.

- May disobey traffic signals and exceed posted speed limits.¹⁷
- May use deadly force in more circumstances than an ordinary citizen, such as to stop a felon from fleeing.¹⁸
- “Shall be held guiltless and fully justified in law” for injuring or killing a rioter who has disobeyed an order to leave a riot.¹⁹
- Is entitled to have supplemental death benefits paid out for the benefit of his or her survivors when killed in the line of duty.²⁰
- Is entitled to special rights and privileges while under investigation.²¹
- Is immune from liability while acting in good faith to take into protective custody a person who meets the criteria for involuntary admission for drug treatment.²²
- Is exempt from the background-check fee for obtaining a concealed weapons and firearms license.²³
- May purchase a firearm from a licensed dealer without undergoing a background check.²⁴
- Is immune from liability for false arrest, false imprisonment, or unlawful detention for reasonably detaining a disorderly restaurant or hotel guest.²⁵
- Is immune from liability for criminal or civil prosecution for trespass to recover lost or abandoned property.²⁶
- Is exempt from having personal identifying and location information from public records provided to the public.²⁷

III. Effect of Proposed Changes:

The bill expressly authorizes a “tactical medical professional” (TMP) who has a concealed weapons and firearms license to possess firearms, weapons, and ammunition when he or she is “actively operating in direct support of a tactical law enforcement operation.” For this authorization to apply, the agency head must have appointed the TMP, the agency must have an established policy for these appointments, and the TMP must complete two types of firearm training, one of which must be provided annually by the agency.

In addition to the *express* authority granted under the bill to possess firearms and weapons while “actively supporting a tactical law enforcement operation,” another provision of the bill may *effectively* grant TMPs the authority to carry concealed or unconcealed firearms and weapons any time they are “carrying out official duties”. The bill grants a TMP the same “immunities and privileges” as a law enforcement officer if the TMP meets the conditions set forth in the bill for the carrying of a firearm or other weapon by a TMP who is assisting on a tactical operation. And

¹⁷ Section 316.072(5), F.S.

¹⁸ Section 776.05, F.S.

¹⁹ See ss. 870.01 and 870.05, F.S. This immunity only applies to the types of officers listed in s. 870.01, F.S.

²⁰ Section 112.19, F.S.

²¹ See s. 112.532, F.S.

²² See ss. 397.675 and 397.6775, F.S.

²³ Section 790.06(5)(b), F.S.

²⁴ Section 790.065(1)(b), F.S.

²⁵ See s. 509.143(1)-(3), F.S.

²⁶ See s. 705.103(1)-(6), F.S.

²⁷ Section 119.071(4), F.S.

law enforcement officers are authorized under current law to carry a concealed or unconcealed firearm or weapon whenever “carrying out official duties in this state”.

Although the intent of the bill is to authorize TMPs to carry weapons and firearms at any place that a tactical law enforcement operation may occur, the specific grant of authority in the bill might be insufficient to allow a TMP to possess a weapon or firearm on school property. Section 790.115, F.S., broadly bans the possession of firearms and other weapons on school property, but states that the ban does not apply to “any law enforcement officer.” Accordingly, a TMP’s authority to carry a weapon or firearm on school property might depend on whether the exemption in s. 790.115(3), F.S. constitutes a “privilege” or “immunity” of a law enforcement officer. The Legislature may wish to amend s. 790.115, F.S., to make it inapplicable to TMPs if it intends to allow TMPs to possess a firearm or weapon on school property in support of their duties.

Moreover, the authority granted by the bill may be insufficient to authorize a TMP to carry a firearm or weapon in places where firearms and weapons may be possessed only by law enforcement officers under federal law.

The bill defines a tactical medical professional as a paramedic, physician, or osteopathic physician who is appointed to provide medical services directly to a tactical law enforcement unit engaged in high-risk incidents, such as drug raids and hostage situations.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill grants a TMP who meets the requirements for carrying a firearm while assisting on a tactical operation the “privileges and immunities” of law enforcement officers, except the power to make an arrest. However, the word “privilege” or “immunity” is used in only some of many instances of special treatment for law enforcement officers in the Florida Statutes. The Legislature may wish to consider whether bill’s general grant of “privileges and immunities” should be replaced by a list of the specific privileges or immunities that the Legislature wishes to grant.

VIII. Statutes Affected:

This bill substantially amends section 790.25 of the Florida Statutes.

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

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

CS by Judiciary on March 11, 2019:

The underlying bill granted a TMP the privileges and immunities of a law enforcement officer, except as to the powers of arrest. The committee substitute provides these privileges and immunities to a TMP only if he or she meets the conditions for carrying a firearm or other weapon. Also, the committee substitute includes osteopathic physicians among those who may qualify as TMPs.

B. Amendments:

None.