

STORAGE NAME: h379s2a.leps
DATE: March 27, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 379

RELATING TO: Carrying of Self-Defense Weapons or Devices

SPONSOR(S): Committee on Law Enforcement and Public Safety and Representatives Bronson and Futch

STATUTE(S) AFFECTED: ss. 790.001(3)(b), 790.01, 790.053, and 790.054, F.S.

COMPANION BILL(S): SB 346 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 6 NAYS 1
- (2) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 4 NAYS 2
- (3)
- (4)
- (5)

I. SUMMARY:

Currently, a person commits the criminal offense of carrying a concealed weapon if he or she carries, in a concealed manner:

- ▶ A "chemical weapon or device" than contains *more than one half ounce of chemical; or*
- ▶ A stun gun or a nonlethal electric weapon or device, if the person does not have a concealed weapons license.

CS/HB 379 defines a "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. The bill provides that a person may legally carry a self-defense chemical spray (as defined in the bill) *openly or in a concealed manner*.

The bill also provides that it is not a crime for a person to carry *openly or in a concealed manner* a nonlethal stun gun or other nonlethal electric weapon or device, as long as the stun gun or weapon or device does not fire a dart or projectile and is designed solely for defensive purposes. CS/HB 379 provides that a person would no longer need a concealed weapons license in order to legally carry a stun gun in a concealed manner.

CS/HB 379 provides that it is a third degree felony for any person to knowingly and willfully use a self-defense chemical spray *or* a nonlethal stun gun or other nonlethal electric weapon or device against a law enforcement officer engaged in the performance of his or her duties.

To the extent that this bill results in a decrease in the number of individuals applying for concealed weapons licenses, there may be a negative fiscal impact to state and local governments. A precise fiscal impact is indeterminate. Additionally, to the extent that persons are arrested for, charged with, and convicted of, the third degree felony offense created in the bill, there will be a fiscal impact to state and local governments [see *Fiscal Comments* for details].

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 790.053, F.S., provides that it is generally unlawful for any person to openly carry a firearm or electric weapon or device. A person who does so commits a second degree misdemeanor [punishable by up to 6 months in a local correctional facility and/or a fine not exceeding \$500]. However, a person *may* openly carry a stun gun or nonlethal electric weapon or device designed solely for defensive purposes, if the weapon does not fire a dart or projectile.

Section 790.01, F.S., prohibits and provides penalties for carrying concealed weapons and concealed firearms. **A person who, on or about his or her person, carries a:**

- ▶ **Concealed weapon or electric weapon or device commits a first degree misdemeanor** [punishable by up to 1 year in a local correctional facility and/or a fine not exceeding \$1,000].

A "concealed weapon" is:

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 [s. 790.001(3)(a), F.S.].

"Tear gas gun," "chemical weapon," or "device" means all weapons of such nature *except* those designed to be carried in a woman's handbag or a man's pants or coat pocket or designed as a pocket pencil or pen and containing *not more than one half ounce of chemical* [s. 790.001(3)(b), F.S.].

An "electric weapon or device" means:

Any device which, through the application or use of electric current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury [s. 790.001(14), F.S.].

- ▶ **Concealed firearm commits a third degree felony**, ranked in Level 5 of the sentencing guidelines *Offense Severity Ranking Chart*.

Section 790.01(3), F.S., provides that the prohibition on carrying a concealed weapon or firearm does not "relate to persons licensed as set forth in ss. 790.053 and 790.06." [Note: s. 790.053, F.S., does not address licensure whatsoever.]

If a person meets the criteria specified in s. 790.06, F.S., the Department of State may issue that person a license to carry a concealed weapon or firearm. *For the purposes of s. 790.06, F.S., concealed weapons or concealed firearms 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 in s. 790.001(9)."*

In short, a person must have a concealed weapons license in order to carry a stun gun or a nonlethal electric weapon or device in a concealed manner. A person cannot legally carry a "chemical weapon" than contains more than one half ounce of chemical, *with or without a concealed weapons license*.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 379 defines a “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. The bill provides that a person may legally carry a self-defense chemical spray (as defined in the bill) *openly or in a concealed manner*.

The bill amends s. 790.01, F.S., relating to *carrying concealed weapons*, to provide that it is not a violation of the section for a person to carry for purposes of lawful self-defense, in a concealed manner:

- ▶ A self-defense chemical spray; *or*
- ▶ A nonlethal stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes and does not fire a dart or projectile.

CS/HB 379 amends s. 790.053, F.S., relating to the *open carrying of weapons*, to provide that a person may openly carry, for purposes of lawful self-defense, self-defense chemical sprays and nonlethal stun guns and other nonlethal electric weapons or devices (as described above).

Finally, CS/HB 379 provides that it is a third degree felony for any person to knowingly and willfully use a self-defense chemical spray or a nonlethal stun gun or other nonlethal electric weapon or device (as described above) against a law enforcement officer engaged in the performance of his or her duties. This new third degree felony offense is ranked, by default, in Level 1 of the sentencing guidelines *Offense Severity Ranking Chart*.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

CS/HB 379 does not eliminate or reduce an agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

The bill provides that persons who chose to carry concealed nonlethal stun guns or other nonlethal electric weapons or devices no longer have to obtain a concealed weapons license under s. 790.06, F.S. As such, these individuals will not have to pay the fees associated with obtaining the license, which include: a non-refundable license fee not exceeding \$85, payable to the Department of State; and a fingerprinting fee not exceeding \$5, payable to the appropriate sheriff's office.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill allows an individual who does not have a concealed weapons license to carry a nonlethal stun gun or other nonlethal electric weapon or device designed solely for defensive purposes in a concealed manner.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

CS/HB 379 does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

CS/HB 379 does not create or change a program providing services to families or children.

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 790.001(3)(b), F.S., which provides a definition of "tear gas gun," "chemical weapon," or "device" for purposes of Chapter 790, F.S., is amended to clarify language and as described above.

Section 2 amends s. 790.01, F.S., relating to carrying concealed weapons, to clarify language and as described above.

Section 3 amends s. 790.053, F.S., relating to the open carrying of weapons, to clarify language and as described above.

Section 4 creates s. 790.054, F.S., *effective October 1, 1997*, to prohibit and provide penalties for using certain self-defense weapons or devices against law enforcement officers, as described above.

Section 5 provides that except as otherwise provided (and noted above), the bill takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

See *Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

See *Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

The bill provides that persons who chose to carry concealed nonlethal stun guns or other nonlethal electric weapons or devices no longer have to obtain a concealed weapons license under s. 790.06, F.S. As such, these individuals will not have to pay the fees associated with obtaining the license, which include: a non-refundable license fee not exceeding \$85, payable to the Department of State; and a fingerprinting fee not exceeding \$5, payable to the appropriate sheriff's office. To the extent that this bill results in a decrease in the number of individuals applying for concealed weapons licenses, there may be a negative fiscal impact to state and local governments. A precise fiscal impact is indeterminate.

To the extent that persons are arrested for, charged with, and convicted of, the third degree felony offense created in the bill, there will be a fiscal impact to state and local governments. Section 921.001(9)(b), F.S., requires that the Criminal Justice Estimating Conference (CJEC) review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The CJEC will review this bill and determine its impact on the state's overall prison population. It is anticipated that such impact will be insignificant.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

On March 19, 1997, the Justice Council referred this bill back to the Committee on Law Enforcement and Public Safety.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 379 deleted the *one half ounce of chemical* limitation on the amount of chemical that could legally be carried as a "chemical weapon or device." The committee substitute defines "self-defense chemical spray" and provides that a person may legally carry, openly or in a concealed manner, "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." Also, the committee substitute made other technical and clarifying language changes.

On March 27, 1997, following referral back to the committee, the second committee substitute amended the bill to clarify that nothing in the bill would "preclude any prosecution for the use of an electric weapon or device or self-defense chemical spray during the commission of any criminal offense under ss. 790.07, 790.10, 790.23, 790.235, F.S., or for any other criminal offense."

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

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