

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: CS/SB 206

INTRODUCER: Criminal Justice Committee and Senators Peaden, Posey, and others

SUBJECT: Firearms/Motor Vehicle

DATE: April 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute addresses provisions relating to the storage and transport of firearms in a motor vehicle on property used for the parking of a motor vehicle.

The committee substitute provides that an employee or invitee in lawful possession of a firearm may, except as otherwise provided by the committee substitute, transport and store a firearm locked inside or locked to his or her motor vehicle in a parking lot designated by an employer or its lessor if the firearm is stored out of sight. An employer or its lessor may prohibit an employee or invitee from transporting, storing, or possessing a firearm on property owned, leased, or controlled by the employer or its lessor, or from transporting, storing, or possessing a firearm in any motor vehicle owned, leased, or rented by the employer, when reasonably necessary for the safety and welfare of employees, invitees, or the general public, or to safeguard its business operations.

The committee substitute provides for immunity from liability for employers under certain conditions and provides for enforcement by the Attorney General.

The committee substitute takes effect upon becoming a law.

This committee substitute substantially amends section 790.25 of the Florida Statutes.

II. Present Situation:

A firearm is defined as “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any

machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.”¹

Section 790.053, F.S, provides that it is unlawful to openly carry any firearm or electric weapon, except a person may openly carry a self-defense chemical spray or a nonlethal stun gun or other nonlethal electric weapon that does not fire a projectile and is designed solely for defensive purposes. A violation of this provision is a misdemeanor of the second degree.

Section 790.06, F.S, provides that the Department of Agriculture and Consumer Services may issue licenses to persons qualified to carry concealed weapons or firearms. A concealed weapon or firearm is 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).”

Section 790.25, F.S., provides for the lawful and unlawful ownership, possession, and use of firearms and other weapons. It specifically prohibits the carrying of a concealed firearm or weapon without a permit. This section provides that the provisions of s. 790.053, F.S., and s. 790.06, F.S., discussed above, do not apply to:

- Members of the military, law enforcement, or persons carrying out or training for emergency management duties;
- Guards or messengers of common carriers;
- Members of any organization duly authorized to purchase or receive weapons;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms;
- A person firing weapons for testing or 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; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Subsection (5) of s. 790.06, F.S., specifically provides that it is lawful “for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use.”

Section 790.25 (2), F.S., specifies certain uses of firearms and other weapons that are not authorized by law.

¹ Section 790.001(6), F.S.

Schools

Section 790.115, F.S., prohibits possession of firearms and certain weapons on school property, school buses, at school-sponsored events, or at school bus stops. There are criminal penalties for violations of this section, and limited exceptions provided.

In addition to the statutes discussed above regarding the possession of firearms, each district school board in Florida is required to have a zero-tolerance policy regarding the possession of firearms by students on school grounds.² A violation of the policy must result in at least a one-year expulsion from school and referral to the criminal justice or juvenile justice system.

Trespassers that carry a weapon or firearm on school property, public or private, commit a felony of the third degree.³

Congress enacted the Gun Free School Zones Act in 1990.⁴ It was subsequently overturned by the United States Supreme Court as a violation of Congress's powers under the commerce clause to regulate inter-state commerce.⁵ The act was passed again in 1996 with changes to address the concerns of the Supreme Court that made it only applicable to guns that crossed state lines in commerce.⁶ In general, the act makes it unlawful for any person to possess a firearm in a school zone. The term "school zone" means "in, or on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school." The term "school" means "a school which provides elementary or secondary education, as determined under State law." Whoever violates the act may be fined up to \$5,000, imprisoned up to five years, or both. Exceptions to this act include:

- if the person is licensed to do so;
- if the firearm is not loaded and in a locked container, or a locked firearms rack which is in a motor vehicle;
- by an individual for use in a program approved by a school in the school zone;
- by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- by a law enforcement officer acting in his or her official capacity; or
- the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

State Correctional Institutions

Section 944.47, F.S., prohibits the introduction of firearms or other weapons into or upon the grounds of any state correctional institution. A violation of the prohibition is a second degree felony offense.

² Section 1006.13(2), F.S.

³ Section 810.095, F.S.

⁴ P.L. 101-647, Sec. 1702(b)(1), 18 USC ss. 921 and 922.

⁵ U.S. v. Lopez, 514 US 549 (1995).

⁶ P.L. 104-208.

Other States

Oklahoma and Alaska have passed laws prohibiting persons and businesses from banning the otherwise lawful possession of a firearm in a locked vehicle in a parking lot.⁷ The Oklahoma statute has not taken effect pending the outcome of federal litigation seeking to overturn the law.⁸ Georgia and Indiana have similar legislation pending.⁹

Occupational Violence

An average of 1.7 million people were victims of violent crimes while working or on duty in the United States each year from 1993 through 1999, including an average of 1.3 million simple assaults, 325,000 aggravated assaults, 36,500 rapes and sexual assaults, 70,000 robberies, and 900 homicides.¹⁰ In 2001, there were 639 workplace homicides in the U.S., the lowest number since the Census of Fatal Occupational Injuries began in 1992 (just over 80 percent of these were from shootings). Of the occupations examined, police officers, corrections officers, and taxi drivers were victimized at the highest rates. Businesses can be and have been held liable for crimes occurring on their property where they were found to be negligent in providing security.

III. Effect of Proposed Changes:

The committee substitute addresses provisions relating to the storage and transport of firearms in a motor vehicle on property used for the parking of a motor vehicle.

The committee substitute defines the terms “motor vehicle,” “employee,” “employer,” “invitee,” and “parking lot.”

The committee substitute provides that an employee or invitee in lawful possession of a firearm may, except as otherwise provided by the committee substitute, transport and store a firearm locked inside or locked to his or her motor vehicle in a parking lot designated by an employer or its lessor if the firearm is stored out of sight. An employer or its lessor may prohibit an employee or invitee from transporting, storing, or possessing a firearm on property owned, leased, or controlled by the employer or its lessor, or from transporting, storing, or possessing a firearm in any motor vehicle owned, leased, or rented by the employer, when reasonably necessary for the safety and welfare of employees, invitees, or the general public, or to safeguard its business operations.

The committee substitute provides that its provisions do not apply to school property as defined and regulated under s. 790.115, F.S., prison-facility grounds as defined and regulated under s. 944.47, F.S., and to property on which an employee or invitee is otherwise prohibited from transporting, storing, or possessing a firearm pursuant to any federal or state law.

⁷ Alaska Stat. Art. 10A, Sec. 18.65.800; Okla. Stat. tit. 21, Pt. IV, Ch. 53, Sec. 1289.7a.

⁸ The Williams Co. and ConocoPhillips Co. have sued the State of Oklahoma in U.S. District Court, Northern District of Oklahoma, No. 04-CV-820 H(J). The federal court enjoined the enforcement of the statute pending the litigation. It certified to the Court of Criminal Appeals of Oklahoma the question of whether the statute was a criminal statute. The Court of Criminal Appeals ruled that it was a criminal statute in *Whirlpool Corp. v. Henry*, 110 P.3d 83 (Okla. Crim. App. 2005).

⁹ House Bill 1028 passed the Committee on Public Safety and Homeland Security in the Indiana House of Representatives on January 25, 2006. House Bill 998 has been referred to the Committee on Public Safety in the Georgia House of Representatives.

¹⁰ Violence in the Workplace, 1993-99, published by the Bureau of Justice Statistics, December 2001 (NCJ 190076).

The committee substitute provides immunity from civil liability to any employer or its lessor for damages in certain occurrences resulting from the use or threatened use of a firearm that was transported or stored by an employee or invitee in a locked motor vehicle on property that was set aside for the parking of motor vehicles. This immunity does not apply to any person who discharges or threatens to use the firearm, and does not apply if the harm involved was caused by the employer's or lessor's willful or criminal misconduct or conscious and flagrant indifference to the safety of the person or persons harmed.

The committee substitute provides for enforcement by the Attorney General on behalf of an aggrieved employee or invitee if there is reasonable cause to believe there has been a willful violation of the act.

The committee substitute provides that its provisions may not be construed in derogation of Florida's employment at will doctrine.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Bear Arms, Private Property Rights

The enforcement of the provisions of this committee substitute presents a constitutional balancing, interpretation, and weighing opportunity for the courts, should it be litigated.

The Florida Constitution¹¹ and the U.S. Constitution¹² contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.¹³ The Florida Supreme Court, in interpreting Florida's constitutional provision, held that while "the Legislature may not entirely prohibit the right of the

¹¹ "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, s. 8(a), Fla. Const.

¹² "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

¹³ See Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R.4th 93; Constitutional right to bear arms--Federal constitution; generally-- Relationship of right to bear arms to preservation of a militia 79 Am. Jur. 2d Weapons and Firearms § 6.

people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen.”¹⁴

The issue that will likely be determined by the courts involves a citizen’s rights upon their private property, to regulate or encroach upon the rights of others (i.e. employees, invitees) who come onto that citizen’s private property. There is little doubt that the *State* is allowed, under the constitution, to regulate or encroach upon the rights of citizens to the extent necessary for the health, safety, and welfare of the general citizenry. This committee substitute, however, potentially pits the private property interests of one citizen against another citizen who chooses to exercise certain rights to carry their lawfully-possessed and stored firearm.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

While the committee substitute provides that it may be enforced by the Attorney General, it is unknown to what extent the Attorney General will be called upon to enforce it.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁴ *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
