

The Florida Senate
PROFESSIONAL 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: Judiciary Committee

BILL: CS/SB 2356

INTRODUCER: Criminal Justice Committee and Senators Peaden and Baker

SUBJECT: Individual Personal Private Property Protection

DATE: April 9, 2007

REVISED: _____

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

I. Summary:

This bill creates a right to keep lawful articles of personal property, including firearms, in one's motor vehicle while using the parking lot of an employer, public entity, or business. The right applies to articles of personal property which are hidden out of sight and locked inside or locked to a motor vehicle.

This bill creates section 790.251, Florida Statutes.

II. Present Situation:

The rights of a person to carry a firearm on the property of another are limited by statutes in few circumstances.¹ Existing statutes also do not address the extent to which the possession of firearms may be prohibited by a public or private property owner.² However, case law has held that an employer may prohibit the possession of firearms on its property.

The right to keep and bear arms and property rights are both rooted in the Florida Constitution. The extent to which a Legislature may create a right for a person to possess firearms on the property of another has not been resolved by the courts.

¹ See s. 258.157, F.S. (prohibiting the possession of firearms in the Savannas State Reserve); s. 790.145, F.S. (prohibiting the possession of concealed firearms within a pharmacy); and s. 790.115(2), F.S. (prohibiting the possession of firearms in schools).

² But see s. 790.115(2)(a)3., F.S.

Property Rights

The Florida Constitution declares that everyone has the right to “acquire, possess and protect property.”³ The Constitution further provides that the right to property may not be deprived without due process of law.⁴

Property rights have been described as follows.

The ownership of property carries certain rights and responsibilities. Those rights control the relationship between the property and all persons. The owner has the right to possession, control and use of the property, including the right to income or benefits from the use of the property. The owner has the right to exclude others from possession, use or control of the property. Within limits, the owner has the right to change, modify, improve, add to or subtract from the property. An owner may sell, transfer or encumber the property.⁵

The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”⁶

Nevertheless, the “Government has considerable latitude in regulating property rights in ways that may adversely affect the owners.”⁷ For example, state and federal law prohibit hotels, restaurants, and other places of public accommodation from discriminating based on race, color, religion, or national origin.⁸

Moreover, the U.S. Supreme Court, in *Pruneyard Shopping Center v. Robins*, has held that a state has a right to adopt “individual liberties more expansive than those conferred by the Federal Constitution.”⁹ In *Pruneyard*, high school students set up a table inside a shopping center and distributed pamphlets and asked passersby to sign petitions. A security guard suggested that the students move to a public sidewalk on the perimeter of the shopping center. The students left and later filed a lawsuit seeking to enjoin the shopping center from denying access to circulate petitions.¹⁰

On appeal, the U.S. Supreme Court upheld the right granted by the California Constitution permitting individuals to exercise the state rights of expression and petition on the property of a privately owned shopping center.¹¹ In so holding, the Court rejected the claim that recognition of the students’ rights violated the shopping center owner’s federally protected property rights.¹²

³ FLA. CONST., art. I, § 2.

⁴ FLA. CONST., art. I, § 9.

⁵ *Scripps Howard Cable Co. v. Havill*, 665 So. 2d 1071, 1075 (Fla. 5th DCA 1995).

⁶ *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

⁷ *Hodel v. Irving*, 481 U.S. 704, 713 (1987).

⁸ 42 U.S.C. § 2000a; ss. 509.092, 760.06, and 760.08, F.S.; *Hamm v. City of Rock Hill*, 379 U.S. 306, 317 (1964) (upholding the constitutionality of the Civil Rights Act of 1964, including 42 U.S.C. § 2000a).

⁹ *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980).

¹⁰ *Id.* at 77.

¹¹ *Id.* at 79-80, and 88.

¹² *Id.*

Right to Keep and Bear Arms

The right to keep and bear arms is addressed by both the Florida and U.S. Constitutions. The second amendment to the U.S. Constitution states: “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.”

Article I, subsection 8(a) of the Florida Constitution states: “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.” As such, the Florida Constitution appears to create an individual right to keep and bear arms for self defense.¹³

Florida law also expressly provides that a firearm may be possessed in a vehicle or a person’s place of business.¹⁴ Unless otherwise permitted by law, a firearm located in a vehicle must be “securely encased” or “not readily accessible for immediate use.”¹⁵ As a result, one who is lawfully in possession of a firearm in a vehicle is not subject to criminal prosecution.¹⁶ Moreover, a person in a vehicle may use a firearm in self defense against a person who unlawfully and forcefully attempts to enter the vehicle.¹⁷

Right to Possess Firearms in the Parking Lot of an Employer

A few courts from other jurisdictions have addressed whether an employer may regulate the possession of firearms in a parking lot controlled by the employer. These cases have generally held that an employer may regulate the possession of firearms on an employee parking lot.

Plona v. United Parcel Service

In *Plona v. United Parcel Service*, an employee was terminated by his employer after an unloaded and disassembled handgun was discovered in his vehicle.¹⁸ The employee’s vehicle was parked in a public access parking lot used by employees and customers of the United Parcel Service (UPS). The employee filed a lawsuit for wrongful termination, and UPS moved to dismiss the lawsuit for failing to state a claim.

The federal trial court denied the motion to dismiss and found that: “the public policy of Ohio permitting citizens to bear arms, as stated in . . . the Ohio constitution, is clear enough to form the basis of a wrongful termination claim.”¹⁹ However, for the purposes of the motion to dismiss, the court assumed that employee’s vehicle was not on UPS property. The court also stated that the parties may revisit the issue raised by the motion to dismiss if it is determined that the handgun was on UPS property.

¹³ See *Alexander v. State*, 450 So. 2d 1212, 1214 (Fla. 4th DCA 1984).

¹⁴ Section 790.25(3)(l) and (n), F.S.

¹⁵ Section 790.25(5), F.S.; compare s. 790.25(3)(l), F.S. (stating that a firearm must be “securely encased and not in the person’s manual possession”).

¹⁶ The case of *Pelt v. Department of Transportation*, 664 So. 2d 320 (Fla. 1st DCA 1995) shows that a license to carry a concealed firearm did not limit an employer’s power to regulate the possession of firearms by an on-duty employee. By implication, the rights to possess firearms provided in ch. 790, F.S., prohibit criminal prosecution, rather than a limit on the power of a property owner.

¹⁷ Section 776.013(1), F.S.

¹⁸ *Plona v. United Parcel Service*, 2007 WL 509747 (N.D. Ohio 2007).

¹⁹ *Id.* at *2.

Bastible v. Weyerhaeuser

In *Bastible v. Weyerhaeuser*, an employer became concerned about drug use on its property.²⁰ The employer then arranged for a sheriff to use dogs to conduct a search of the employee parking lot for drugs. However, the dogs also signaled the presence of firearms in the vehicles. The employees found with firearms in their vehicles were terminated. The employees sued claiming that the terminations violated their rights to bear arms. The *Bastible* court upheld the terminations.

Hansen v. America Online, Inc.

In *Hansen v. America Online, Inc.*, several off-duty America Online, Inc., employees met at their employer's parking lot.²¹ While in the parking lot, the employees transferred their firearms into one vehicle before going target shooting at a local gun range. The employees' activities in the parking lot were captured on a video camera. Several days later the employees were discharged. The employees filed a lawsuit alleging that their termination violated public policy. The court held that an employee, absent an agreement to the contrary, does not have the right to carry a firearm on his employer's property.

Constitutional Challenge

Subsequent to the decision in *Bastible v. Weyerhaeuser*, the Oklahoma Legislature enacted a statute that permits employees to store firearms in their vehicles on an employer's property. In response, several businesses filed a lawsuit in federal court challenging the constitutionality of the law.²² The court, as of the date of this staff analysis, has not ruled on the constitutional challenge.

III. Effect of Proposed Changes:

This bill creates a right to keep lawful articles of personal property, including firearms, in one's motor vehicle while using the parking lot of an employer, public entity, or business. The right applies to articles of personal property which are hidden out of sight and locked inside or locked to a motor vehicle. However, the bill structures the right as a limitation on the power of an employer, business, or public or private entity to regulate the possession of firearms.

Specifically, the bill provides that an employer, business, or public or private entity generally may not:

- Prohibit the lawful possession of an article of personal property that is out of sight and locked inside or to a vehicle lawfully in a parking lot;
- Ask about personal property contained in a motor vehicle;
- Take action against a customer, employee, or invitee based on alleged personal private possessions in the person's motor vehicle in a parking lot;
- Search a motor vehicle for any purpose;

²⁰ *Bastible v. Weyerhaeuser*, 437 F.3d 999 (10th Cir. 2006).

²¹ *Hansen v. America Online, Inc.*, 96 P.3d 950 (Utah 2004).

²² *Bastible*, 437 F3d at 1004-1005 n7.

- Condition employment upon an agreement that an employee refrain from possessing personal property related to rights protected under the Florida and U.S. Constitutions;
- Prohibit the use of a parking lot by a customer, employee, or invitee based on personal property that is out of sight and locked within a motor vehicle; or
- Discriminate against an employee or expel a customer or invitee for exercising the right to bear arms or the right of self defense.

However, the limitations on the power to regulate the possession of personal property out of sight and locked in a motor vehicle do not apply to:

- Certain business property used in connection with national defense, aerospace, and domestic security;
- Certain businesses that handle combustible or explosive materials;
- Motor vehicles owned or controlled by an employer;
- Property owned or controlled by an employer for which firearms are prohibited by state or federal law;
- School property; and
- Correctional institutions.

The bill further provides that a public or private entity has no liability for acting in compliance with the limits on the public or private entity's power to regulate the possession of personal property.

Additionally, the bill provides that it may be enforced by the Attorney General or by a private civil action.

The bill provides that it takes effect upon becoming a law and applies to causes of action accruing on or after that date.

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:

Whether a state statute may limit the power of a property owner to regulate the possession of firearms has not been resolved by courts. The issue, however, may be

addressed by a lawsuit that is pending in federal court in Oklahoma. See the “Present Situation” section of this staff analysis for a discussion of constitutional property rights and the right to keep and bear arms.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains flush left language on page 5, lines 4-6, which states that the limitations on the power to regulate the possession of firearms in motor vehicles applies to public-sector employers. However, the introductory language to subsection (2) of section 790.251, F.S., makes the limitations applicable to public entities. As such, the use of the flush left language may imply that subsection (2) does not apply to private entities. The Legislature may wish to clarify the effect of the flush left language.

Paragraph (6)(d) of section 790.251, F.S., in part appears to attempt to place a restriction on future Legislatures. Such restrictions, however, are not binding.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
