

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 Community Affairs

BILL: CS/CS/CS/SB 296

INTRODUCER: Community Affairs Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; Criminal Justice Committee; and Senator Brandes

SUBJECT: Carrying a Concealed Weapon or a Concealed Firearm

DATE: April 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Ryon</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
3.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 296 creates an exception to s. 790.01, F.S. Section 790.01, F.S., is the statute that prohibits carrying concealed weapons or firearms unless a person is licensed to do so or if the weapon is a self-defense chemical spray or nonlethal stun gun or similar device designed for defensive purposes.

The exception provided in the bill allows a person to carry a concealed weapon, or firearm if he or she may otherwise lawfully possess a firearm, while in the act of complying with a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., regardless of licensure status.

II. Present Situation:

Under current Florida law, it is lawful for a person to carry a concealed weapon without a concealed weapon license for purposes of lawful self-defense, so long as the weapon is limited to self-defense chemical spray, a nonlethal stun gun, a dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹

¹ Section 790.01(4), F.S.

Without licensure, carrying a different type of concealed weapon,² electric weapon, or device other than one designed solely for defensive purposes is a first degree misdemeanor.³ Carrying a concealed firearm without proper licensure is a third degree felony offense.⁴

It is lawful for a person to openly carry a self-defense chemical spray, nonlethal stun gun or dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.⁵

Certain persons under particular circumstances are exempt from the limitations on the open carry of weapons in s. 790.053, F.S., and the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed, and used. 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 in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 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 ch. 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;
- 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;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- 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;

² A concealed weapon, under s. 790.001(3)(a), F.S., means 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.

³ Section 790.01(1), F.S.

⁴ Section 790.01(2), F.S.

⁵ Section 790.053, 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; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.⁶

Concealed Weapons and Firearm Licensure

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon and firearm licenses to those applicants that qualify.⁷ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.⁸

To obtain a concealed weapons or firearm license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.⁹

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

⁶ Section 790.25(3), F.S.

⁷ Section 790.06(1), F.S.

⁸ *Id.*

⁹ Section 790.06(1)-(5), F.S.

Subsection (2) of s. 790.06, F.S., requires DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- 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 which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-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. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that 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.¹⁰

DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence

¹⁰ Section 790.06(2), F.S.

constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹¹

DACS shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.¹²

DACS shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.¹³ DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.¹⁴

In addition, DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁵

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹⁶ Failure to have proper documentation and display it upon demand is a second degree misdemeanor.¹⁷

¹¹ Section 790.06(3), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 790.06(10), F.S.

¹⁶ Section 790.790.06(1), F.S.

¹⁷ Section 790.06(1), F.S.

A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into:

- Any place of nuisance as defined in s. 823.05, F.S.;
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any school administration building;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any elementary or secondary school facility;
- Any career center;
- Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- Inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.¹⁸

Firearms in Vehicles

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. The same is true for a legal long gun, without the need for encasement, when it is carried in the private conveyance for a lawful purpose.¹⁹

“Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container

¹⁸ Section 790.06(12), F.S.

¹⁹ Section 790.25(5), F.S.

which requires a lid or cover to be opened for access.²⁰ The term “readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.²¹

Reciprocity

DACS provides an up-to-date list of the states that honor Florida concealed carry licenses.²² It should be noted that travel with a concealed weapon or firearm into states that do not honor Florida’s concealed carry licenses, or when a person does not possess a concealed carry license subjects the person to the laws of that state.

Limitations on Purchase of a Firearm

Florida law prohibits transfer of a firearm by a federally licensed firearm dealer to a person who:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.;
- Has been convicted of a misdemeanor crime of domestic violence;
- Has had an adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred;
- Has been indicted or has had an information filed against her or him for an offense that is a felony under state or federal law (pending disposition information that indicates the potential buyer is not prohibited);
- Has had an injunction for protection against domestic violence entered against him or her under s. 741.30, F.S.;
- Has had an injunction for protection against repeat violence entered against him or her under s. 784.046, F.S.; or
- Has been arrested for a dangerous crime as specified under s. 907.041(4)(a), F.S., or the crimes listed in s. 790.065(2)(c), F.S., (pending disposition information that indicates the potential buyer is not prohibited).

Emergency Management Powers of the Governor

Section 252.36(1), F.S., states that the Governor is responsible for meeting the dangers presented to this state and its people by emergencies. Under that authority the Governor can declare a state of emergency.

Section 252.36(2), F.S., provides that the state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.

²⁰ Section 790.001(17), F.S.; *Dixon v. State*, 831 So.2d 775 (Fla. 4th DCA 2002); *Gemmill v. State*, 657 So.2d 900 (Fla. 4th DCA 1995).

²¹ Section 790.001(16), F.S.

²² DACS, *Important Information Concerning Concealed Weapon License Reciprocity with Other States*, <http://www.freshfromflorida.com/content/download/7444/118465/ReciprocityList.pdf> (last visited Apr. 4, 2014).

The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency.

In addition, pursuant to s. 252.36(5), F.S., the Governor may:

- Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state;²³ and
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. However, nothing contained in ss. 252.31-252.90, F.S., shall be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act.²⁴

Chapter 870 – Affrays; Riots; Routs; Unlawful Assemblies

Section 870.043, F.S., authorizes sheriffs and designated city officials to declare a state of emergency if he or she determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof. The state of emergency commences upon its declaration and terminates 72 hours thereafter unless, prior to the end of the 72-hour period, the public official, Governor, county commission, or city council terminate it.²⁵

Whenever a sheriff or city official declares a state of emergency, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with any limitations and conditions he or she deems appropriate:

- The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking;
- The prohibition of the sale or distribution of any alcoholic beverage;
- The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage;
- The closing of places of public assemblage with designated exceptions;
- The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof; and
- The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.²⁶

In addition to the above-described measures that a local public official has discretion to order, the following acts are prohibited during a state of emergency declared under ch. 870, F.S.:

²³ Section 252.36(5)(e), F.S.

²⁴ Section 252.36(5)(h), F.S.

²⁵ Section 870.047, F.S.

²⁶ Section 870.045, F.S.

- The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description;
- The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description; and
- The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.²⁷

A violation of any of the above-described provisions is a first degree misdemeanor.

North Carolina Case Law Related to Concealed Carry During States of Emergency

In North Carolina, where a state of emergency may be declared by the Governor,²⁸ a municipality²⁹ or a county,³⁰ provisions of the Riot Control Act of 1969 made it a Class 1 misdemeanor for any person “to transport or possess off his own premises any dangerous weapon or substance in any area” where a state of emergency had been declared.³¹

In a 2012 Second Amendment challenge, a United States District Court for North Carolina struck down the North Carolina statutes, ruling that they violated the Second Amendment right to bear arms. The statutes in question allowed government officials to outright ban citizens from carrying defensive weapons outside the home, hunt, or engage in firearm related sporting activities. Additionally, although the statutes did not directly regulate the possession of firearms within the home, they effectively prohibited law abiding citizens from purchasing and transporting to their homes firearms and ammunition needed for self-defense. The court found that the statutes were subject to strict scrutiny, rather than intermediate scrutiny, since bans on weapons infringed upon the right to defend the home, which is a core Second Amendment right.³² The court concluded that:³³

The problem here is that the emergency declaration statutes, are not narrowly tailored to serve the government's interest in public safety. They do not target dangerous individuals or dangerous conduct. Nor do they seek to impose reasonable time, place and manner restrictions by, for example, imposing a curfew to allow the exercise of Second Amendment rights during circumscribed times.

III. Effect of Proposed Changes:

Section 1 creates an exception to s. 790.01, F.S., the statute that prohibits carrying concealed weapons or firearms unless a person is licensed to do so. If the weapon is a self-defense chemical

²⁷ Section 870.044, F.S.

²⁸ Section 14-288.15(d), N.C.G.S.

²⁹ Section 14-288.12(b), N.C.G.S.

³⁰ Sections 14-288.13(b), 14(a), N.C.G.S.

³¹ Sections 14-288.7, N.C.G.S.

³² *Bateman v. Perdue*, 881 F.Supp.2d 709 (E.D. N.C. 2012).

³³ *Id.*, at 716.

spray or nonlethal stun gun or similar device designed for defensive purposes, a person may carry it concealed without a license.

The exception provided in the bill allows a person to carry a concealed weapon or firearm on or about his or her person, regardless of licensure status, while in the act of complying with a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S. In order to carry a firearm the person must be lawfully able to possess the firearm.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference considered SB 296 on January 30, 2014, and determined that it would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.01 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/CS/CS by Community Affairs on April 8, 2014:

Restricts the concealed weapon or firearm licensure exception from applying while a person is in the act of complying with a mandatory evacuation order issued during a state of emergency declared by a local authority pursuant to ch. 870, F.S.

CS/CS by Military and Veterans Affairs, Space, and Domestic Security on April 1, 2014:

Expands the concealed weapon or firearm licensure exception to apply while a person is in the act of complying with a mandatory evacuation order issued during a state of emergency declared by a local authority pursuant to ch. 870, F.S.

CS by Criminal Justice on March 3, 2014:

Clarifies that convicted felons who are not permitted to possess a firearm under any circumstances are not permitted to do so while following an evacuation order.

- B. **Amendments:**

None.