

By Senator Smith

31-01077-15

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1 A bill to be entitled
2 An act relating to carrying a concealed weapon or a
3 concealed firearm; creating s. 776.001, F.S.;
4 providing legislative intent regarding the justifiable
5 use of force; amending s. 776.041, F.S.; clarifying
6 what constitutes provocation in the determination of
7 applicability of the justified use of force provision;
8 amending s. 790.01, F.S.; providing an exemption from
9 criminal penalties for a person carrying a concealed
10 weapon or a concealed firearm when evacuating pursuant
11 to a mandatory evacuation order during a declared
12 state of emergency; reenacting s. 790.02, 790.06(1),
13 790.25(5), and 921.0022(3)(e), F.S., to incorporate
14 the amendment made to s. 790.01, F.S., in references
15 thereto; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 776.001, Florida Statutes, is created to
20 read:

21 776.001 Justifiable use of force; legislative intent.—The
22 use of force authorized by this chapter is not intended to
23 encourage vigilantism or acts of revenge, authorize the
24 initiation of a confrontation as a pretext to responding with
25 deadly force, or negate a duty to retreat for persons engaged in
26 unlawful mutual combat.

27 Section 2. Subsection (2) of section 776.041, Florida
28 Statutes, is amended to read:

29 776.041 Use or threatened use of force by aggressor.—The

31-01077-15

2015822__

30 justification described in the preceding sections of this
31 chapter is not available to a person who:

32 (2) Initially provokes the use or threatened use of force
33 against himself or herself, unless:

34 (a) Such force or threat of force is so great that the
35 person reasonably believes that he or she is in imminent danger
36 of death or great bodily harm and that he or she has exhausted
37 every reasonable means to escape such danger other than the use
38 or threatened use of force which is likely to cause death or
39 great bodily harm to the assailant; or

40 (b) In good faith, the person withdraws from physical
41 contact with the assailant and indicates clearly to the
42 assailant that he or she desires to withdraw and terminate the
43 use or threatened use of force, but the assailant continues or
44 resumes the use or threatened use of force.

45
46 For purposes of this subsection, provocation must include the
47 use of force or threat of force.

48 Section 3. Section 790.01, Florida Statutes, is amended to
49 read:

50 790.01 Unlicensed carrying of concealed weapons or
51 concealed firearms.—

52 (1) Except as provided in subsection (3) ~~(4)~~, a person who
53 is not licensed under s. 790.06 and who carries a concealed
54 weapon or electric weapon or device on or about his or her
55 person commits a misdemeanor of the first degree, punishable as
56 provided in s. 775.082 or s. 775.083.

57 (2) Except as provided in subsection (3), a person who is
58 not licensed under s. 790.06 and who carries a concealed firearm

31-01077-15

2015822__

59 on or about his or her person commits a felony of the third
60 degree, punishable as provided in s. 775.082, s. 775.083, or s.
61 775.084.

62 (3) This section does not apply to:

63 (a) A person who carries a concealed weapon, or a person
64 who may lawfully possess a firearm and who carries a concealed
65 firearm, on or about his or her person while in the act of
66 evacuating during a mandatory evacuation order issued during a
67 state of emergency declared by the Governor pursuant to chapter
68 252 or declared by a local authority pursuant to chapter 870 a
69 ~~person licensed to carry a concealed weapon or a concealed~~
70 ~~firearm pursuant to the provisions of s. 790.06.~~

71 ~~(b)(4) It is not a violation of this section for~~ A person
72 ~~who carries~~ to carry for purposes of lawful self-defense, in a
73 concealed manner:

74 1.(a) A self-defense chemical spray.

75 2.(b) A nonlethal stun gun or dart-firing stun gun or other
76 nonlethal electric weapon or device that is designed solely for
77 defensive purposes.

78 ~~(4)(5)~~ This section does not preclude any prosecution for
79 the use of an electric weapon or device, a dart-firing stun gun,
80 or a self-defense chemical spray during the commission of any
81 criminal offense under s. 790.07, s. 790.10, s. 790.23, or s.
82 790.235, or for any other criminal offense.

83 Section 4. For the purpose of incorporating the amendment
84 made by this act to section 790.01, Florida Statutes, in a
85 reference thereto, section 790.02, Florida Statutes, is
86 reenacted to read:

87 790.02 Officer to arrest without warrant and upon probable

31-01077-15

2015822__

88 cause.—The carrying of a concealed weapon is declared a breach
89 of peace, and any officer authorized to make arrests under the
90 laws of this state may make arrests without warrant of persons
91 violating the provisions of s. 790.01 when said officer has
92 reasonable grounds or probable cause to believe that the offense
93 of carrying a concealed weapon is being committed.

94 Section 5. For the purpose of incorporating the amendment
95 made by this act to section 790.01, Florida Statutes, in a
96 reference thereto, subsection (1) of section 790.06, Florida
97 Statutes, is reenacted to read:

98 790.06 License to carry concealed weapon or firearm.—

99 (1) The Department of Agriculture and Consumer Services is
100 authorized to issue licenses to carry concealed weapons or
101 concealed firearms to persons qualified as provided in this
102 section. Each such license must bear a color photograph of the
103 licensee. For the purposes of this section, concealed weapons or
104 concealed firearms are defined as a handgun, electronic weapon
105 or device, tear gas gun, knife, or billie, but the term does not
106 include a machine gun as defined in s. 790.001(9). Such licenses
107 shall be valid throughout the state for a period of 7 years from
108 the date of issuance. Any person in compliance with the terms of
109 such license may carry a concealed weapon or concealed firearm
110 notwithstanding the provisions of s. 790.01. The licensee must
111 carry the license, together with valid identification, at all
112 times in which the licensee is in actual possession of a
113 concealed weapon or firearm and must display both the license
114 and proper identification upon demand by a law enforcement
115 officer. Violations of the provisions of this subsection shall
116 constitute a noncriminal violation with a penalty of \$25,

31-01077-15

2015822__

117 payable to the clerk of the court.

118 Section 6. For the purpose of incorporating the amendment
119 made by this act to section 790.01, Florida Statutes, in a
120 reference thereto, subsection (5) of section 790.25, Florida
121 Statutes, is reenacted to read:

122 790.25 Lawful ownership, possession, and use of firearms
123 and other weapons.—

124 (5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding
125 subsection (2), it is lawful and is not a violation of s. 790.01
126 for a person 18 years of age or older to possess a concealed
127 firearm or other weapon for self-defense or other lawful purpose
128 within the interior of a private conveyance, without a license,
129 if the firearm or other weapon is securely encased or is
130 otherwise not readily accessible for immediate use. Nothing
131 herein contained prohibits the carrying of a legal firearm other
132 than a handgun anywhere in a private conveyance when such
133 firearm is being carried for a lawful use. Nothing herein
134 contained shall be construed to authorize the carrying of a
135 concealed firearm or other weapon on the person. This subsection
136 shall be liberally construed in favor of the lawful use,
137 ownership, and possession of firearms and other weapons,
138 including lawful self-defense as provided in s. 776.012.

139 Section 7. For the purpose of incorporating the amendment
140 made by this act to section 790.01, Florida Statutes, in a
141 reference thereto, paragraph (e) of subsection (3) of section
142 921.0022, Florida Statutes, is reenacted to read:

143 921.0022 Criminal Punishment Code; offense severity ranking
144 chart.—

145 (3) OFFENSE SEVERITY RANKING CHART

31-01077-15

2015822__

146
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153

(e) LEVEL 5

Florida
Statute

Felony
Degree

Description

316.027 (2) (a)

3rd

Accidents involving
personal injuries other
than serious bodily
injury, failure to stop;
leaving scene.

316.1935 (4) (a)

2nd

Aggravated fleeing or
eluding.

322.34 (6)

3rd

Careless operation of
motor vehicle with
suspended license,
resulting in death or
serious bodily injury.

327.30 (5)

3rd

Vessel accidents
involving personal
injury; leaving scene.

379.367 (4)

3rd

Willful molestation of a
commercial harvester's
spiny lobster trap,
line, or buoy.

	31-01077-15		2015822__
	379.3671	3rd	Willful molestation,
	(2) (c) 3.		possession, or removal
			of a commercial
			harvester's trap
			contents or trap gear by
			another harvester.
154			
	381.0041 (11) (b)	3rd	Donate blood, plasma, or
			organs knowing HIV
			positive.
155			
	440.10 (1) (g)	2nd	Failure to obtain
			workers' compensation
			coverage.
156			
	440.105 (5)	2nd	Unlawful solicitation
			for the purpose of
			making workers'
			compensation claims.
157			
	440.381 (2)	2nd	Submission of false,
			misleading, or
			incomplete information
			with the purpose of
			avoiding or reducing
			workers' compensation
			premiums.
158			
	624.401 (4) (b) 2.	2nd	Transacting insurance

31-01077-15

2015822__

without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

159

626.902 (1) (c)

2nd

Representing an unauthorized insurer; repeat offender.

160

790.01 (2)

3rd

Carrying a concealed firearm.

161

790.162

2nd

Threat to throw or discharge destructive device.

162

790.163 (1)

2nd

False report of deadly explosive or weapon of mass destruction.

163

790.221 (1)

2nd

Possession of short-barreled shotgun or machine gun.

164

790.23

2nd

Felons in possession of firearms, ammunition, or electronic weapons or devices.

31-01077-15

2015822__

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796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
812.019 (1)	2nd	Stolen property; dealing in or trafficking in.

31-01077-15

2015822__

172

812.131 (2) (b)

3rd

Robbery by sudden
snatching.

173

812.16 (2)

3rd

Owning, operating, or
conducting a chop shop.

174

817.034 (4) (a) 2.

2nd

Communications fraud,
value \$20,000 to
\$50,000.

175

817.234 (11) (b)

2nd

Insurance fraud;
property value \$20,000
or more but less than
\$100,000.

176

817.2341 (1),
(2) (a) & (3) (a)

3rd

Filing false financial
statements, making false
entries of material fact
or false statements
regarding property
values relating to the
solvency of an insuring
entity.

177

817.568 (2) (b)

2nd

Fraudulent use of
personal identification
information; value of
benefit, services

31-01077-15

2015822__

received, payment
 avoided, or amount of
 injury or fraud, \$5,000
 or more or use of
 personal identification
 information of 10 or
 more individuals.

178

817.625 (2) (b)

2nd

Second or subsequent
 fraudulent use of
 scanning device or
 reencoder.

179

825.1025 (4)

3rd

Lewd or lascivious
 exhibition in the
 presence of an elderly
 person or disabled
 adult.

180

827.071 (4)

2nd

Possess with intent to
 promote any photographic
 material, motion
 picture, etc., which
 includes sexual conduct
 by a child.

181

827.071 (5)

3rd

Possess, control, or
 intentionally view any
 photographic material,

31-01077-15

2015822__

motion picture, etc.,
which includes sexual
conduct by a child.

182

839.13 (2) (b)

2nd

Falsifying records of an
individual in the care
and custody of a state
agency involving great
bodily harm or death.

183

843.01

3rd

Resist officer with
violence to person;
resist arrest with
violence.

184

847.0135 (5) (b)

2nd

Lewd or lascivious
exhibition using
computer; offender 18
years or older.

185

847.0137
(2) & (3)

3rd

Transmission of
pornography by
electronic device or
equipment.

186

847.0138
(2) & (3)

3rd

Transmission of material
harmful to minors to a
minor by electronic
device or equipment.

31-01077-15

2015822__

187

874.05 (1) (b)

2nd

Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

188

874.05 (2) (a)

2nd

Encouraging or recruiting person under 13 years of age to join a criminal gang.

189

893.13 (1) (a) 1.

2nd

Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).

190

893.13 (1) (c) 2.

2nd

Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school,

31-01077-15

2015822__

or state, county, or
 municipal park or
 publicly owned
 recreational facility or
 community center.

191

893.13(1)(d)1.

1st

Sell, manufacture, or
 deliver cocaine (or
 other s. 893.03(1)(a),
 (1)(b), (1)(d), (2)(a),
 (2)(b), or (2)(c)4.
 drugs) within 1,000 feet
 of university.

192

893.13(1)(e)2.

2nd

Sell, manufacture, or
 deliver cannabis or
 other drug prohibited
 under s. 893.03(1)(c),
 (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3),
 or (4) within 1,000 feet
 of property used for
 religious services or a
 specified business site.

193

893.13(1)(f)1.

1st

Sell, manufacture, or
 deliver cocaine (or

31-01077-15

2015822__

other s. 893.03(1)(a),
 (1)(b), (1)(d), or
 (2)(a), (2)(b), or
 (2)(c)4. drugs) within
 1,000 feet of public
 housing facility.

194

893.13(4)(b)

2nd

Deliver to minor
 cannabis (or other s.
 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3.,
 (2)(c)5., (2)(c)6.,
 (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4)
 drugs).

195

893.1351(1)

3rd

Ownership, lease, or
 rental for trafficking
 in or manufacturing of
 controlled substance.

196

197

Section 8. This act shall take effect July 1, 2015.