

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 849 Concealed Weapons and Firearms on Private School Property
SPONSOR(S): Criminal Justice Subcommittee, Combee and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 2 N, As CS	Homburg	White
2) Judiciary Committee	12 Y, 6 N	White	Camechis

SUMMARY ANALYSIS

Currently, Florida law, subject to limited exceptions, prohibits a person, including a person who has a license to carry a concealed weapon or concealed firearm (licensee), from carrying such weapon or firearm at a school. The term "school" means "any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic." The only person excepted from this prohibition is a law enforcement officer.

Florida law does not prohibit or address the carrying of a concealed weapon or concealed firearm by a licensee at a religious institution in this state. An owner of private property on which a religious institution is located may determine whether to authorize or prohibit concealed carry by licensees on the property. If prohibited, the private property owner can enforce the prohibition through trespass law.

The bill amends current law that prohibits licensees from carrying a concealed weapon or concealed firearm at a school. Under the bill, a licensee is not prohibited from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property; thereby, allowing the private property owner to determine whether to authorize or prohibit such carry by licensees on the property.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Overview

A United States (US) citizen or resident who is 21 years of age or older may apply to the Department of Agriculture and Consumer Services for a concealed weapon or concealed firearm¹ license (CWL). To qualify for a CWL, the person must: be able to safely handle a weapon and firearm; not have been convicted of a felony, unless his or her firearm rights have been restored; not be dependent on alcohol or controlled substances; and satisfy other requirements.² A person who receives a CWL may carry a concealed weapon or firearm in this state, unless proscribed by state or federal statute.³

There are 1,707,116 CWL holders in Florida.⁴ The age profile of these licensees is:

- 327,063 license holders are between the ages of 21-35;
- 439,805 license holders are between the ages of 36-50;
- 539,141 license holders are between the ages of 51-65; and
- 427,478 license holders are age 66 and older.⁵

Weapons and Firearms in Schools

General Prohibitions

Section 790.115, F.S., regulates the possession and discharge of weapons and firearms on school property. "School" is defined to mean "any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic."⁶ The section does not apply to law enforcement officers.^{7, 8}

Under this section, a person is prohibited from possessing any firearm,⁹ electric weapon or device,¹⁰ destructive device,¹¹ or other weapon,¹² including a razor blade or box cutter, except:

¹ The term "concealed weapons or concealed firearms" is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun" s. 790.06(1), F.S.

² s. 790.06(2), F.S. Further requirements for the applicant include demonstrating competence with a firearm, not having been adjudicated incapacitated within 5 years, not having been committed to a mental institution within 5 years, not having had adjudication withheld on a felony or domestic battery charge within 3 years, not having an injunction for domestic or repeat violence in effect against them, and not being prohibited from owning a firearm under another provision of Florida or federal law.

³ s. 790.06(12)(a)15., F.S.

⁴ DACS, *Number of Licensees by Type as of February 28, 2017*,

http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited on March 1, 2017).

⁵ DACS, *Concealed Weapon or Firearm License Holder Profile as of February 28, 2017*,

http://www.freshfromflorida.com/content/download/7500/118857/cw_holders.pdf (last visited on March 1, 2017).

⁶ s. 790.115(2)(a)3., F.S.

⁷ This applies to law enforcement officers as defined in s. 943.10(1)-(4),(6)-(9), or(14), F.S.

⁸ s. 790.115(3), F.S.

⁹ "Firearm" means "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." s. 790.001(6), F.S.

¹⁰ The term "electric weapon or device" means "any device which, through the application or use of electrical 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.

¹¹ The term "destructive device" is defined in part to mean, "any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas" s. 790.001(4), F.S. The remainder of the definition specifies more included items, as well as exclusions.

- As authorized in support of school-sanctioned activities, at a school-sponsored event, or on the property of any school, school bus, or school bus stop; or
- That a person may carry a firearm:
 - In a case to a firearms program, class, or function if approved in advance by the principal or chief administrative officer;
 - In a case to a career center having a firearms training range; or
 - In a vehicle pursuant unless a school district adopts written and published policies that waive this exception for purposes of student and campus parking privileges.¹³

A person who violates this provision commits:

- A third degree felony, unless the person is a CWL holder in which case the offense is a second degree misdemeanor.¹⁴
- A second degree felony¹⁵ if the person discharged a firearm during the violation. This penalty applies to persons with or without a CWL.¹⁶

The section also makes it third degree felony¹⁷ for a person to exhibit any weapon, firearm, or dangerous device¹⁸ in the presence of another person in a rude, careless, angry, or threatening manner during school hours or during the time of a school sanctioned school activity.^{19, 20}

Prohibitions Applicable to CWL Holders

Pursuant to s. 790.06(12)(a)10., 11., and 13, F.S., a CWL holder is not authorized to carry a concealed weapon or firearm, either openly or concealed, into:

- An elementary or secondary school facility or administration building;
- A career center; or
- A 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 specified type of stun gun or nonlethal electric weapon.

A violation of the aforementioned prohibitions by a CWL holder constitutes a second degree misdemeanor.²¹

Weapons and Firearms in Religious Institutions

Florida law does not prohibit or otherwise address the carrying of weapons or firearms in religious institutions. An owner of private property on which a religious institution is located may determine whether to authorize or prohibit concealed carry by CWL holders. If prohibited, the private property owner can enforce the prohibition through trespass²² law, which provides that a person commits a:

¹² “Weapon” means “ any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.” s. 790.001(13), F.S.

¹³ s. 790.115(2)(a), F.S.

¹⁴ s. 790.115(2)(a), (b), and (e), F.S.

¹⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹⁶ s. 790.115(2)(d) and (e), F.S.

¹⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁸ For the purpose of subsection. 790.115(1), F.S. this includes any sword, sword cane, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife.

¹⁹ This prohibition applies on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a public or private elementary, middle, or secondary school. s. 790.115(1), F.S.

²⁰ This prohibition does not apply if the exhibition of the weapon takes place on private real property if the owner of the property invited the person on the property.

²¹ s. 790.06(12)(d), F.S.

²² Trespass occurs when a person: (a) without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance; or (b) having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so. s. 810.08(1), F.S.

- Third degree felony if he or she trespasses in a structure or conveyance while armed with a firearm or other dangerous weapon or firearm.²³
- Third degree felony if he or she trespasses on school property²⁴ while in possession of a weapon or firearm.²⁵

Federal Law

The Gun Free School Zones Act of 1990 (Act) prohibits the possession of a firearm in a school zone.²⁶ A school zone is defined as any area on or within 1,000 feet of a public, parochial, or private school.²⁷ There is an exception, however, for persons licensed to carry a firearm by the state in which the school zone is located.²⁸ Licensees are not prohibited under the Act from carrying within a school zone, unless prohibited by state law.

Effect of the Bill

The bill amends s. 790.115(3), F.S., to provide that the section and s. 790.06(12)(a)10., 11., and 13. do not prohibit a CWL holder from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property. As discussed above, “school” in this context means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

The bill defines “religious institution” as:

- A church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship; and
- A separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.²⁹

Although the bill removes the statutory prohibitions against concealed carry by CWP holders on private school property where a religious institution is located, the private property owner, in his or her discretion, can prohibit such carry through trespass law.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.115, F.S., relating to possessing or discharging weapons or firearms on school grounds.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state government revenues.

²³ s. 810.08(2)(c), F.S.

²⁴ “School property” is defined to mean “the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.” s. 810.095(2), F.S.

²⁵ s. 810.095(1), F.S.

²⁶ Crime Control Act of 1990, PL 101-647, 18 U.S.C. §922(q)(2)(A).

²⁷ 18 U.S.C. §921(a)(25).

²⁸ 18 U.S.C. §922(q)(2)(B)(ii).

²⁹ ss. 496.404 and 775.0861., F.S.

2. Expenditures: The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.

2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS only amends current law to provide that a licensee is not prohibited from carrying a concealed weapon or concealed firearm on private school property if a religious institution is located on the property. In contrast, the original bill amended law governing licensee carry on both public and private school property regardless of whether a religious institution was co-located on the property.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.