

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 Judiciary

BILL: SB 134

INTRODUCER: Senators Steube and Grimsley

SUBJECT: Concealed Weapons or Firearms

DATE: November 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Unfavorable
2.			GO	
3.			RC	

I. Summary:

SB 134 authorizes a person who has a concealed weapon or firearm license to carry a concealed weapon or firearm into a courthouse if he or she immediately notifies management or security personnel of the presence of the weapon or firearm. Then, the licensee must follow security or management personnel's instructions for removing, securing, and storing the item, or the licensee must surrender the item until the licensee is leaving the courthouse.

The bill also defines "courthouse" and states that any local ordinance, administrative rule, administrative order, or regulation that conflicts with the definition or the right to carry a weapon or firearm into a courthouse, as permitted by this bill, is preempted to the Legislature. Moreover, the bill subjects a person or entity that enacts or enforces a preempted ordinance, rule, order, or regulation to penalties including, but not limited to, fines and removal from office by the Governor.

II. Present Situation:

Concealed Carry of Weapons or Firearms

Lawful Concealed Carry of Weapons or Firearms

Chapter 790, F.S., regulates who may carry weapons or firearms and where and how these persons may carry them. In general, this chapter prohibits a person from carrying a concealed weapon or firearm unless the person has a concealed weapon or firearm license.¹

¹ See ss. 790.01 and 790.06, F.S.; *but see* s. 790.25(3), F.S., which provides that the prohibition against carrying a concealed weapon and the licensure requirement do not apply in certain circumstances.

Florida's concealed-carry-licensing scheme is set forth in s. 790.06, F.S. The license permits the concealed carry of handguns and certain non-firearm weapons.² Currently, there are roughly 1.8 million Floridians holding a standard concealed-carry license.³

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:⁴

- 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 that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime 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;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;⁵
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which 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.

The licensing statute states that a license to carry a concealed weapon or firearm is “valid throughout the state,” which strongly implies that licensees may carry concealed throughout

² “For the purposes of this section, concealed firearms and concealed weapons are 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” elsewhere in statute. Section 790.06(1), F.S.

³ As of October 31, 2017, 1,812,542 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited November 3, 2017).

⁴ Section 790.06(2), F.S. On the other hand, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S.

⁵ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

Florida.⁶ However, the statute also expressly states that the license “does not authorize” a licensee to carry a concealed weapon or firearm into any:⁷

- *Courthouse*;
- *Courtroom*;⁸
- Place of nuisance, such as a brothel or place where criminal gang activity takes place repeatedly;
- Police, sheriff, or highway patrol station;
- Detention facility, prison, or jail;
- Polling place;
- Meeting of the governing body of a county, public school district, municipality, or special district;
- Meeting of the Legislature or a committee of the Legislature;
- School, college, or professional athletic event not related to firearms;
- Elementary or secondary school facility or administration building;
- Career center;
- 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;
- 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;
- Airport’s passenger terminal and sterile area, 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
- Place where the carrying of firearms is prohibited by federal law.

A licensee who carries a concealed weapon or firearm into a courthouse or other prohibited place commits a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not to exceed \$500.⁹

Preemption of Regulations on Firearms and Ammunition

In 1987, the Legislature enacted legislation to provide statewide uniformity in the regulation of firearms and ammunition. This law—the Joe Carlucci Uniform Firearms Act (Act), codified as s. 790.33, F.S.—includes an express statement of its policy and intent:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by

⁶ The licensing statute expressly states that licensees are not subject to the statute that criminalizes concealed carry. The licensing statute also expressly states that the license does not authorize carrying into specific places listed in the licensing statute. Thus, the licensing statute strongly implies, though nowhere expressly states, that licensees may carry generally throughout Florida.

⁷ Section 790.06(12)(a), F.S. (Emphasis added)

⁸ “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.” Section 790.06(12)(a)5., F.S. Note that this provision does not refer to *firearms*, but only *weapons*.

⁹ Section 790.06(12)(d), F.S.; *see also* ss. 775.082(4)(b) and 775.083(1)(e), F.S.

any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.¹⁰

The Act accomplished its stated purpose by “occupying the whole field of regulation of firearms and ammunition,” as stated in subsection (1) of the Act:

Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances are hereby declared null and void.¹¹

Additionally, the Act requires the courts to impose civil fines of up to \$5,000 against certain government officials who willfully enact or cause an improper ordinance, regulation, or rule to be enforced. An offending government official may not use public funds to pay the fine. Moreover, he or she may be removed from office by the Governor.¹²

As exceptions to the broad preemption of the regulation of firearms and ammunition, the Act states that it does not prohibit:¹³

- Zoning ordinances that encompass firearms businesses along with other businesses, provided that they are not designed to restrict or prohibit the sale, purchase, transfer, or manufacture of firearms or ammunition;
- Regulations pertaining to firearms and ammunition issued to law enforcement agencies;
- Regulations prohibiting the carrying of firearms and ammunition by an employee of a local jurisdiction during and in the course of his or her official duties;
- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge; or
- The Florida Fish and Wildlife Conservation Commission’s regulation of the use of firearms or ammunition to take wildlife or on shooting ranges managed by the commission.

But even beyond these exceptions, cities and universities have attempted to regulate firearms, resulting in litigation. And while these cases have revealed that the Act has not preempted every firearm regulation, the Act has not been held to be unconstitutional.¹⁴

¹⁰ Section 790.33(2)(a), F.S.

¹¹ Section 790.33(1), F.S.

¹² Section 790.33(3), F.S.

¹³ Section 790.33(4), F.S.

¹⁴ See, e.g., *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (holding that a city ordinance regulating firearms was preempted by the Act); *Florida Carry, Inc. v. Univ. of Fla.*, 180 So. 3d 137 (Fla. 1st DCA 2015) (holding that the university’s prohibition of firearms in university housing, which was consistent with a statute that broadly prohibited possessing a firearm on campus, was not preempted by the Act); *Florida Carry, Inc. v. Univ. of N. Fla.*, 133 So. 3d 966 (Fla. 1st DCA 2013) (holding that the university’s prohibition on keeping a firearm in a locked vehicle on

III. Effect of Proposed Changes:

SB 134 authorizes a person who has a concealed weapon or firearm license to carry a concealed weapon or firearm into a courthouse if he or she immediately notifies management or security personnel of the presence of the weapon or firearm. Then, the licensee must:

- Follow the security or management personnel’s instructions for removing, securing, and storing the weapon or firearm; or
- Temporarily surrender the weapon or firearm to the security or management personnel, who shall store the weapon or firearm in a locker, safe, or other secure location and return the weapon or firearm to the licensee when he or she is exiting the courthouse.

As such, the bill does not permit carrying a firearm past the entryway of most courthouses.¹⁵

The bill also defines “courthouse” and states that any local ordinance, administrative rule, administrative order, or regulation that conflicts with the definition or the right to carry a weapon or firearm into a courthouse is preempted to the Legislature. Moreover, the bill subjects a person or entity that enacts or enforces a preempted ordinance, rule, order, or regulation to penalties including, but not limited to, fines and removal from office by the Governor.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Florida Constitution requires counties to bear the “cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts”¹⁶ Therefore, to the extent that money must be spent for trial courts to implement the bill—perhaps to buy a new firearm safe—the counties must bear this cost. However, any required expenditures are expected to be minimal.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

campus was preempted by the Act because such possession was authorized in statute as an exception to the general ban on possessing a firearm on campus).

¹⁵ However, some Florida courthouses have no security checkpoints at their entrances.

¹⁶ FLA. CONST. art. V, s. 14(c); *see also*, s. 29.008, F.S. (repeating the constitutional obligations of counties to fund court-related functions).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Constitution requires that “[f]unding for the state courts system . . . be provided from state revenues appropriated by general law.”¹⁷ Moreover, the Florida Statutes require that state revenues appropriated by general law be used to fund the “[c]onstruction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court.”¹⁸ Therefore, to the extent that money must be spent for the district courts of appeal and the Florida Supreme Court to implement the bill—perhaps to buy new firearm safes—the state must bear this cost. However, any required expenditures are expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁷ FLA. CONST. art. V, s. 14(a).

¹⁸ Section 29.004(4), F.S.