

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 270

INTRODUCER: Criminal Justice Committee and Senator Berman

SUBJECT: Discharging a Firearm in Residential Areas

DATE: February 1, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Fav/CS
2.			JU	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 270 amends s. 810.09(2)(h), F.S., to revise the third degree felony<sup>1</sup> offense of trespass on property other than a structure or conveyance, by removing provisions relating to taking, or attempting to take an animal, and *adding* the requirement that the trespasser's actions in committing the trespass offense must be *willfully* and knowingly committed.

Under the bill, any person who willfully and knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass.

In addition to the statute's current exemption from applicability to any governmental agent or employee acting within the scope of his or her official duties,<sup>2</sup> the bill creates the following exemptions:

- For a person lawfully defending life or property or performing official duties requiring the discharge of a potentially lethal projectile; or
- If, under the circumstances, the discharge of a potentially lethal projectile does not pose a reasonably foreseeable risk to life, safety, or property.

The bill is effective October 1, 2024.

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<sup>1</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 810.09(2)(h), F.S.

## II. Present Situation:

### Discharging a Firearm

Prior to 2012, s. 790.15(1), F.S., did not address discharging a firearm on private property except that it was a first degree misdemeanor to knowingly discharge a firearm over any occupied premises.<sup>3</sup>

In 2012, the Legislature amended s. 790.15(1), F.S., to prohibit “recklessly or negligently discharging a firearm” outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013, F.S., or zoned exclusively for residential use.<sup>4</sup>

### Backyard Gun Ranges

In 2015, the Legislature created s. 790.15(4), F.S., to address safety issues surrounding the use of backyard gun ranges in residential areas. Section 790.15(4), F.S., states: Any person who recreationally discharges a firearm outdoors, including target shooting, in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre, commits a misdemeanor of the first degree.<sup>5</sup> This section of the law does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm;
- If, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property; or
- To a person who accidentally discharges a firearm.<sup>6</sup>

Now, based on more recent news accounts, it appears there may be additional and more recent concerns about backyard shooting ranges.<sup>7</sup>

### Trespass on Property Other than a Structure or Conveyance

Section 810.09, F.S., prohibits trespass by a person who willfully enters upon or remains in any property other than a structure or conveyance:

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<sup>3</sup> Section 790.15(1), F.S., also provides that it is a first degree misdemeanor to knowingly discharge a firearm in any public place or on the right-of-way of any paved public road, highway, or street or over the right-of-way of any paved public road, highway, or street.

<sup>4</sup> Chapter 2012-108, L.O.F. The term “dwelling” is defined in s. 776.013, F.S., as a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

<sup>5</sup> A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 790.15(4), F.S.

<sup>7</sup> Patrick Riley, Naples Daily News, May 27, 2019, *Backyard shooting ranges spark debate in Golden Gate Estate*, available at <https://www.naplesnews.com/story/news/local/2019/03/15/golden-gate-estates-backyard-shooting-ranges-spark-debate/2549089002/> (last visited January 26, 2024); Cheryl S. Grant, Naples Daily News, December 31, 2019, *Reasons Florida deputies can't shut down most backyard shooting ranges*, available at <https://www.naplesnews.com/story/news/local/florida/2019/12/31/why-deputies-cant-shut-down-most-backyard-shooting-ranges-florida/2784051001/> (last visited January 26, 2024).

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.01, F.S.; or
- If the property is the unenclosed curtilage of a dwelling<sup>8</sup> and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Section 810.09(2)(h), F.S., provides that any person who, in taking or attempting to take any animal described in s. 379.101(19) or (20) F.S., or in killing, attempting to kill, or endangering any animal described in s. 585.01(13), F.S., and who knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits a third degree felony of trespass.<sup>9</sup>

This crime does not apply to any governmental agent or employee acting within the scope of his or her official duties.

The term “potentially lethal projectile” includes any projectile launched from any firearm, bow, crossbow, or similar tensile device.<sup>10</sup>

An “authorized person” or “person authorized” means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.<sup>11</sup>

The following descriptions of animals are cross-referenced in s. 810.09(2)(h), F.S.:

- “Fur-bearing animals” means muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, and opossum.<sup>12</sup>
- “Game” means deer, bear, squirrel, rabbits, and, where designated by commission rules, wild hogs, ducks, geese, rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse, pheasants, quail, and doves.<sup>13</sup>
- “Livestock” means grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas which are raised for private use or commercial purposes.<sup>14</sup>

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<sup>8</sup> The term “unenclosed curtilage” means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. Section 810.09(1)(b), F.S.

<sup>9</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 810.09(2)(h), F.S. In s. 790.333(2)(d), F.S., relating to sport shooting and training ranges, the term “projectile” is defined as any object expelled, propelled, discharged, shot, or otherwise released from a firearm, BB gun, airgun, or similar device, including, but not limited to, gunpowder, ammunition, lead, shot, skeet, and trap targets and associated chemicals, derivatives, and constituents thereof.

<sup>11</sup> Section 810.09(3), F.S.

<sup>12</sup> Section 379.101(19), F.S.

<sup>13</sup> Section 379.101(20), F.S.

<sup>14</sup> Section 585.01(13), F.S.

### III. Effect of Proposed Changes:

The bill amends s. 810.09(2)(h), F.S., to revise the third degree felony<sup>15</sup> offense of trespass on property other than a structure or conveyance, by removing provisions relating to taking, or attempting to take an animal, and *adding* the requirement that the trespasser's actions in committing the trespass offense must be *willfully* and knowingly committed.

Under the bill, any person who willfully and knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass.

In addition to the statute's current exemption from applicability to any governmental agent or employee acting within the scope of his or her official duties,<sup>16</sup> the bill creates the following exemptions:

- For a person lawfully defending life or property or performing official duties requiring the discharge of a potentially lethal projectile; or
- If, under the circumstances, the discharge of a potentially lethal projectile does not pose a reasonably foreseeable risk to life, safety, or property.

The bill is effective October 1, 2024.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None identified.

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<sup>15</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>16</sup> Section 810.09(2)(h), F.S.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Office of Economic and Demographic Research has not yet met to consider this bill therefore there is no reportable fiscal impact to the Department of Corrections.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 810.09 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 by Criminal Justice on January 30, 2024:**

The committee substitute:

- Amends s. 810.09(2)(h), F.S., to remove the provisions relating to taking, or attempting to take any animal described in s. 379.101(19) or (20), F.S.,<sup>17</sup> or s. 585.01(13), F.S.<sup>18</sup>
- Retains the third degree felony<sup>19</sup> trespass offense, as it otherwise exists in current law but *adds* the requirement that the person’s actions in committing the trespass offense must be *willfully and* knowingly committed.
- Adds exemptions to applicability.

<sup>17</sup> “Fur-bearing animals” or “Game.”

<sup>18</sup> “Livestock.”

<sup>19</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Section 775.082, and s. 775.083, F.S.

B. Amendments:

None.

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

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