

**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 Criminal Justice Committee

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BILL: SB 234

INTRODUCER: Senators Evers and Dockery

SUBJECT: Firearms - Open Carry

DATE: February 10, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

Senate Bill 234 amends the concealed weapons license law to provide that a person who is in compliance with the concealed carry license requirements and limitations may carry such weapon openly in addition to carrying it in a concealed manner.

It also revises the definitions of places where a person may lawfully carry a weapon by deleting the prohibition against carrying a weapon on the property of colleges, universities, career centers and certain elementary and secondary schools.

The bill provides that a person who is licensed to carry a weapon or firearm shall not be prohibited from carrying it in or storing it in a vehicle for lawful purposes.

The bill allows the Department of Agricultural and Consumer Services to take the fingerprints that license applicants submit with their applications for licensure. This will provide applicants with an additional location where their prints can be taken.

The bill also amends Florida law regarding the transfer of firearms by Florida residents which occur in other states.

This bill substantially amends sections 790.06 and 790.065 and repeals section 790.28 of the Florida Statutes.

## 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.<sup>1</sup>

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

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.<sup>5</sup>

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;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- 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;

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<sup>1</sup> s. 790.01(4), F.S.

<sup>2</sup> 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.

<sup>3</sup> s. 790.01(1), F.S.

<sup>4</sup> s. 790.01(2), F.S.

<sup>5</sup> s. 790.053, F.S.

- 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;
- 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.<sup>6</sup>

### **Concealed Weapons Licensure**

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants that qualify.<sup>7</sup> 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.<sup>8</sup>

According to the FY 2009-2010 statistics, the DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.<sup>9</sup>

To obtain a concealed weapons 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;

<sup>6</sup> s. 790.25(3), F.S.

<sup>7</sup> s. 790.06(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> [http://licgweb.doacs.state.fl.us/stats/07012009\\_06302010\\_cw\\_annual.pdf](http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf) ; last visited February 11, 2011.

- 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.<sup>10</sup>

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.

Subsection (2) of s. 790.06, F.S., requires the 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

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<sup>10</sup> s. 790.06(1)-(5), F.S.

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.<sup>11</sup>

The 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 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.<sup>12</sup>

The 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.<sup>13</sup>

The 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.<sup>14</sup> The 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.<sup>15</sup>

In addition, the 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 subsection (2);
- 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;

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<sup>11</sup> s. 790.06(2), F.S.

<sup>12</sup> s. 790.06(3), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

- 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.<sup>16</sup>

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.<sup>17</sup> Failure to have proper documentation and display it upon demand is a second degree misdemeanor.<sup>18</sup>

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.<sup>19</sup>

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<sup>16</sup> s. 790.06(10), F.S.

<sup>17</sup> s. 790.790.06(1), F.S.

<sup>18</sup> s. 790.06(1), F.S.

<sup>19</sup> s. 790.06(12), F.S.

### **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.<sup>20</sup>

“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 which requires a lid or cover to be opened for access.<sup>21</sup> 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.<sup>22</sup>

Section 790.251, F.S., became law in 2008. It addressed the lawful possession of firearms in vehicles within the parking lots of businesses, and was commonly known as the “Guns at Work” law. The law was challenged quickly after its passage. The court recognized the Legislature’s authority to protect an *employee* from employment discrimination where the employee had a concealed carry license and kept a firearm in a vehicle at work. However, because of the statutory definitions of employer and employee, the court found a problem in the application of the law to *customers*.

The court’s reading of the statutory definitions led to this conclusion: a business which happened to employ a person with a concealed weapon license (who kept a firearm secured in his or her vehicle in the parking lot at work) would have been prohibited from expelling a customer who had a firearm in his or her car; a business without such an employee would have been free to expel such a customer. The court found that there was no rational basis for treating two similarly situated businesses differently just because one happened to employ someone with a concealed weapons license, therefore the state was enjoined from enforcing the part of the law that applied to customers.<sup>23</sup>

### **Florida Residents Purchasing Shotguns and Rifles in Other States**

In 1968, the Federal Gun Control Act (GCA) was enacted.<sup>24</sup> Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector<sup>25</sup> to sell

<sup>20</sup> s. 790.25(5), F.S.

<sup>21</sup> s. 790.001(17), F.S.

<sup>22</sup> s. 790.001(16), F.S.

<sup>23</sup> *Florida Retail Federation v. Attorney General*, 576 F.Supp.2d 1281 (N.D.Fla. 2008).

<sup>24</sup> Pub. L. No. 90-618 (codified at 18 U.S.C. §§ 921-928).

<sup>25</sup> The term “importer” means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term “manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term “dealer” means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be “licensed,” an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18.U.S.C. § 921.

or deliver any firearm<sup>26</sup> to any person who the licensee knew or had reasonable cause to believe did not reside in the state in which the licensee's place of business was located.<sup>27</sup> The GCA specified that this prohibition did not apply to the sale or delivery of a rifle<sup>28</sup> or shotgun<sup>29</sup> to a resident of a state contiguous to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permitted such sale or delivery by law;
- The sale fully complied with the legal conditions of sale in both such contiguous states; and
- The purchaser and the licensee had, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that took place at a location other than at the licensee's premises.<sup>30</sup>

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located.<sup>31</sup> Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.<sup>32</sup> FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.<sup>33</sup>

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. Florida has not revised or repealed its statute.

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<sup>26</sup> 18 U.S.C. § 921 defines the term "firearm" as any weapon (including a starter gun) which will or 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; or any destructive device. Such term does not include an antique firearm.

<sup>27</sup> 18 U.S.C. § 922(b)(3) (1968).

<sup>28</sup> 18 U.S.C. § 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

<sup>29</sup> 18 U.S.C. § 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

<sup>30</sup> 18 U.S.C. § 922(b)(3) (1968).

<sup>31</sup> See, e.g., O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

<sup>32</sup> Pub. L. No. 99-308.

<sup>33</sup> 18 U.S.C. §922(b)(3) (1986).



It should be noted federal-licensed firearms dealers, importers and manufacturers are required by the federal government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring the firearm.

### **III. Effect of Proposed Changes:**

Senate Bill 234 provides that a person who holds a valid concealed weapon or firearm license, issued by the Department of Agriculture and Consumer Affairs (DACCS) under s. 790.06, F.S., may carry a weapon or firearm openly.

The bill specifically amends the definitions and limitations, found in s. 790.06(12), F.S., on where weapons or firearms can be carried by allowing a license-holder to carry a weapon or firearm within a career center, a college or university, and nonpublic elementary or secondary school facilities.

Also, the bill inserts a provision in s. 790.06(12), F.S., that specifically protects a licensed person from being prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

A person who carries a weapon or firearm into one of the prohibited locations set forth in subsection (12) of s. 790.06, F.S., or a person who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a second degree misdemeanor if they do so knowingly and willfully under the provisions of the bill.

The bill also authorizes the DACCS to take fingerprints from a license-applicant for inclusion with the application packet. This provides the applicant with an additional place to have their prints taken.

Section 790.28, F.S., is repealed by the bill. It is the provision that limits Florida residents to the purchase of rifles and shotguns in contiguous states. A paragraph is added by the bill to s. 790.065, F.S., in order to clarify that a licensed dealer's shotgun or rifle sale to a Florida resident in another state is subject only to the federal law and the law of the state wherein the transfer is made.

### **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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.